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ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS
AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1145

TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE ALASKA NATIVES WITH CERTAIN OPTIONS FOR THE CONTINUED OWNERSHIP OF LANDS AND CORPORATE SHARES RECEIVED PURSUANT TO THE ACT, AND FOR OTHER PURPOSES

H.R. 278

TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE ALASKA NATIVES WITH CERTAIN OPTIONS FOR THE CONTINUED OWNERSHIP OF LANDS AND CORPORATE SHARES RECEIVED PURSUANT TO THE ACT, AND FOR OTHER PURPOSES

MAY 19, 1987



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ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS OF 1987

TUESDAY, MAY 19, 1987

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Frank H. Murkowski, presiding.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Good morning. I will call the hearing to order. This is the Subcommittee on Public Lands, National Parks and Forests, and I want to thank my colleague, Senator Dale Bumpers, who is the Subcommittee Chairman. It is through his cooperation and efforts that we are here today. I am particularly pleased at the privilege which he has granted me to Chair this hearing at this time.

This is a hearing on S. 1145 and H.R. 278, bills which amend the Alaska Native Claims Settlement Act of 1971 or ANCSA, to address the so-called 1991 issues. H.R. 278 is identical to a bill that passed the House last year. S. 1145 is similar to the Senate substitute amendment to S. 2065 proposed last session, which many of you are familiar with, and which was not enacted at the close of the 99th Congress.

Now that we are through with the numbers, let me relate back, I think, to the point of why we are here. The year 1991, of course, is very crucial for Alaska's Native communities and Alaska's Native people. It is a critical landmark to determine whether our Native people retain control over the lands received pursuant to ANCSA. ANCSA was a unique approach adopted by Congress to resolve the aboriginal land claim. The law established the 12 native regional corporations as well as the 13th, and over 200 villages and village corporations were established.

Each of these corporations received a portion of the 44 million acre land entitlement and approximately \$960 million. Natives who wished to participate in the settlement enrolled in regional and/or village corporations and received 100 shares of stock in each. By law this stock cannot be sold or transferred until 1991, at which time the restrictions expire and the stock can be sold on the open

market. At the time the act was passed it was assumed land would be conveyed in a timely manner without litigation and that there would be a simple transition from a primarily subsistence lifestyle to that of a corporate shareholder.

These expectations, unfortunately, have not been realized. As a result, many Native shareholders are in fear of losing their land in 1991 when the stock will be available for sale. Others argue for no restriction beyond 1991. Some of these are elders and other Alaska Natives as well. However, the bills before us today attempt to address these concerns. Senate Bill 1145 is the product. I don't know if you remember, but I certainly do, 13 Congressional hearings, 10 in Alaska and 3 in Washington, D.C.—more hearings, I might add, than on any other Alaska issue considered by Congress to date. Today is hearing number 14 on the 1991 issue.

I see many familiar faces with us today, although some of my Eskimo friends I see are still out whaling, but that is understandable. The whales only come once a year.

Senate Bill 1145 is a compromise package, drafted in response to concerns raised during the hearings. However, there still remain two outstanding issues on which there is a wide range of opinion. While there is a consensus that there should be some mechanism to extend stock restrictions beyond 1991, there is disagreement over what is the best way to extend the restrictions. Should the Congress automatically extend the restrictions and allow the shareholders to terminate these restrictions by vote? Or should the restrictions terminate according to existing law in 1991 and should we change that law now to allow shareholders to extend the restrictions? Or is the solution somewhere in between?

A subsidiary issue to the stock restrictions issue is how to compensate dissenters who may lose on the question of stock restriction. Should dissenters' rights be mandatory? If dissenters' rights are required, how would they be valued? These, of course, are questions that we intend to ask various witnesses this morning, including those from Interior.

A second issue concerns the ability of the corporations to transfer their assets to some other entity to hold and manage. There is a legitimate argument that corporations in some case are not the best structures to manage ANCSA assets. However, this oftentimes gets quickly tangled up in the sovereignty controversy over the extent of governmental authority, if any, that a native entity can exercise over its lands.

Thus the issue is how to meet the needs of the corporations who seek some other management entity without creating any new arguments for sovereignty or affecting those that do or do not exist. There are those in the Alaska native community who seek a greater opportunity for sovereignty in this legislation particularly through this provision. I personally will not support that position. Throughout the hearings on this legislation the bulk of the testimony has been against creating any new arguments for sovereignty or not changing any that would foster sovereignty.

Clearly, there is work that needs to be done on these amendments. We look forward to these hearings to provide the opportunity to hear the various viewpoints on these issues as we continue with this hearing number 14 on the 1991 issue today. I would

remind you all of the basic purpose behind the legislation, suggesting we keep the eye on the ball to extend the nontransferability of stock beyond 1991 to protect the land that currently is under Native ownership.

At this time let me recognize our senior Senator, Senator Stevens, who has joined us, and I would like to also recognize Senator Chic Hecht of Nevada. Gentlemen. We have just started. I have completed my opening statement. Ted, would you care to make a statement at this time, and then we will proceed with Chic, and see if anybody else is coming.

[The texts of S. 1145 and H.R. 278 follow:]

100TH CONGRESS
1ST SESSION

S. 1145

To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6 (legislative day, APRIL 21), 1987

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) this Act may be cited as the "Alaska Native Claims
4 Settlement Act Amendments of 1987".

5 (b) Unless otherwise expressly provided, whenever in
6 this Act an amendment is expressed in terms of an amend-
7 ment to a section or subsection, the reference shall be consid-
8 ered to be made to a section or subsection of the Alaska

1 Native Claims Settlement Act of 1971, as amended (43
2 U.S.C. 1601-1629a).

3 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

4 SEC. 2. The Congress finds and declares that—

5 (1) the Alaska Native Claims Settlement Act was
6 enacted in 1971 to achieve a fair and just settlement of
7 all aboriginal land and hunting and fishing claims by
8 Natives and Native groups of Alaska with maximum
9 participation by Natives in decisions affecting their
10 rights and property;

11 (2) the settlement enabled Natives to participate
12 in the expansion of Alaska's economy over the past fif-
13 teen years, encouraged efforts to address serious health
14 and welfare problems in rural Alaska, and sparked a
15 resurgence of interest in the cultural heritage of the
16 Native peoples of Alaska;

17 (3) despite these achievements and Congress's
18 desire that the settlement be accomplished rapidly
19 without litigation and in conformity with the real eco-
20 nomic and social needs of Natives, the complexity of
21 the land conveyance process and frequent and costly
22 litigation have delayed implementation of the settle-
23 ment and diminished its value;

24 (4) furthermore, many Natives have come to the
25 conclusion that the corporate model adopted by the
26 Alaska Native Claims Settlement Act is not always

1 well adapted to the reality of life in Native villages and
2 to traditional Native cultural values;

3 (5) to ensure the continued success of the settle-
4 ment and to guarantee Natives continued participation
5 in decisions affecting their rights and property, the
6 Alaska Native Claims Settlement Act must be amend-
7 ed to enable the shareholders of each Native Corpora-
8 tion to structure, in accordance with the provisions of
9 this Act, the further implementation of the settlement
10 in light of their particular circumstances and needs;

11 (6) among other things, the shareholders of each
12 corporation must be permitted to consider—

13 (A) whether restrictions on alienation of
14 stock issued as part of the settlement should con-
15 tinue beyond 1991,

16 (B) whether Natives born after December
17 18, 1971, should participate in the settlement,
18 and

19 (C) whether a business corporation is the
20 most appropriate entity to hold legal title to lands
21 received in the settlement;

22 (7) no provision of this Act (the Alaska Native
23 Claims Settlement Act Amendments of 1987) shall—

1 (A) supersede the declaration of policy set
2 forth in section 2 of the Alaska Native Claims
3 Settlement Act of 1971,

4 (B) rescind the extinguishment of aboriginal
5 land claims and hunting and fishing rights affected
6 by section 4 of that Act, or

7 (C) confer on any Native organization any
8 degree of sovereignty over lands (including man-
9 agement, or regulation of the taking, of fish and
10 wildlife) or persons in Alaska; and

11 (8) the Alaska Native Claims Settlement Act, as
12 amended, and this Act are both Indian legislation en-
13 acted by Congress pursuant to its plenary authority
14 under the Constitution of the United States to regulate
15 Indian affairs.

16 NEW DEFINITIONS

17 SEC. 3. Section 3 (43 U.S.C. 1602) is amended—

18 (1) by inserting "group," after "individual," in
19 subsection (h);

20 (2) by striking out "and" at the end of subsection
21 (k);

22 (3) by striking out the period at the end of subsec-
23 tion (1) and inserting in lieu thereof a semicolon;

24 (4) by striking out "Native Group." in subsection
25 (m) and inserting in lieu thereof "Group Corporation;";
26 and

1 (5) by adding at the end thereof the following new
2 subsections:

3 “(n) ‘Group Corporation’ means an Alaska Native
4 Group Corporation organized under the laws of the State of
5 Alaska pursuant to section 14(h)(2) of this Act as a business
6 for-profit or not-for-profit corporation to hold, invest, manage
7 and/or distribute lands, property, funds, and other rights and
8 assets for and on behalf of members of a Native group in
9 accordance with the terms of this Act;

10 “(o) ‘Urban Corporation’ means an Alaska Native
11 Urban Corporation organized under the laws of the State of
12 Alaska pursuant to section 14(h)(3) of this Act as a business
13 for-profit or not-for-profit corporation to hold, invest, manage
14 and/or distribute lands, property, funds, and other rights and
15 assets for and on behalf of members of an urban community
16 of Natives in accordance with the terms of this Act;

17 “(p) ‘Settlement Common Stock’ means stock of a
18 Native Corporation issued pursuant to section 7(g)(1) that
19 carries with it the rights and restrictions listed in section
20 7(h)(1);

21 “(q) ‘Replacement Common Stock’ means stock of a
22 Native Corporation issued in exchange for Settlement
23 Common Stock pursuant to section 7(h)(4);

24 “(r) ‘Descendant of a Native’ means—

4 “(2) an adoptee of a Native or of a descendant of
5 a Native, whose adoption—

8 “(B) is recognized at law or in equity; and

9 “(s) ‘Alienability restrictions’ means the restrictions im-
10 posed on alienation of Common Stock by section 7(h)(1)(b).”

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

“(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one-hundred shares of stock to each Native enrolled in the region pursuant to section 5.

21 “(B)(i) Notwithstanding any other provision of law, a
22 Regional Corporation may amend its articles of incorporation
23 to authorize the issuance of additional shares of Settlement
24 Common Stock to—

25 (I) Natives born after December 18, 1971, or

1 (II) Natives who were eligible for enrollment pur-
2 suant to section 5 but were not so enrolled, for no con-
3 sideration or for such consideration as may be specified
4 in the amendment to the articles of incorporation or in
5 a resolution adopted by the board of directors pursuant
6 to authority expressly vested in the board by the
7 amendment.

8 “(ii) No more than one-hundred shares of additional Set-
9 tlement Common Stock may be issued to any one individual
10 pursuant to clause (i).

11 “(iii) In the amendment authorized by subparagraph
12 (B)(i), a Regional Corporation may provide that upon the
13 death of the Native to whom Settlement Common Stock was
14 issued pursuant to clause (i), such Settlement Common Stock
15 (or stock issued in exchange for such Settlement Common
16 Stock) pursuant to subsection (h)(3) or section 38(g) shall be
17 deemed canceled. No compensation for this cancellation shall
18 be paid to the estate of the deceased Native or to any person
19 holding the stock.

20 “(2) OTHER FORMS OF STOCK.—(A) Notwithstanding
21 any other provision of law and in addition to any other au-
22 thority, a Regional Corporation may amend its articles of
23 incorporation to authorize the issuance of shares of stock
24 other than Settlement Common Stock in accordance with the
25 provisions of this paragraph. Such amendment may provide

1 that preemptive rights of shareholders under the laws of the
2 State shall not apply to the issuance of such shares.

3 “(B) The amendment authorized by subparagraph (A)
4 may provide that the additional stock to be issued shall be
5 one or more of the following—

6 “(i) divided into classes and series within classes,
7 with preferences, limitations, and relative rights, in-
8 cluding, without limitation—

9 “(I) divided rights,

10 “(II) voting rights, or

11 “(III) liquidation preferences;

12 “(ii) made subject to one or more of—

13 “(I) the restrictions on alienation described in
14 clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

15 “(II) the restriction described in paragraph
16 (1)(B)(iii); and

17 “(iii) restricted in issuance to—

18 “(I) Natives who have attained the age of
19 sixty-five, or

20 “(II) another identifiable group of Natives
21 defined in terms of general applicability and not in
22 any way by reference to place of residence or
23 family; or

24 “(III) entities established for the sole benefit
25 of Natives or descendants of Natives, including an

1 identifiable group of Natives or descendants of
2 Natives defined in terms of general applicability
3 and not in any way by reference to place of resi-
4 dence, family, or position as an officer, director,
5 or employee of a Native Corporation.

6 “(C) The amendment authorized by subparagraph (A)
7 shall provide that the additional shares of stock shall be
8 issued—

9 “(i) as a dividend or other distribution (without
10 regard to surplus of the corporation under the laws of
11 the State) upon each outstanding share of Settlement
12 Common Stock, or

13 “(ii) for such consideration as may be permitted
14 by law (except that this requirement may be waived
15 with respect to issuance of stock to the individuals or
16 entities described in subparagraph (B)(iii)(III)).

17 “(D) During the period in which alienability restrictions
18 are in effect, no stock, whose issuance is authorized pursuant
19 to subparagraph (A), shall be—

20 “(i) issued to a group of individuals composed only
21 of employees, officers, or directors of the corporation;
22 or

23 “(ii) issued more than thirteen months after the
24 date on which the vote of the shareholders authorizing
25 the issuance of such stock occurred if, as a result of

1 the issuance, the outstanding shares of Settlement
2 Common Stock will represent less than a majority of
3 the total voting power of the corporation for the pur-
4 pose of electing directors.

5 “(3) DISCLOSURE REQUIREMENTS.—(A) An amend-
6 ment to the articles of incorporation of a Regional Corpora-
7 tion Authorized by paragraph (2)(A) shall specify—

8 “(i) the maximum number of shares of any class
9 or series of stock to be issued, and

10 “(ii) the maximum number of votes that may be
11 held by such shares.

—12— “(B) If an amendment to the articles of incorporation of
13 a Regional Corporation authorized by paragraph (2)(A) per-
14 mits the issuance of classes or series of stock that, when
15 issued singly or in combination, may cause the outstanding
16 shares of Settlement Common Stock to represent less than a
17 majority of the total voting power of the corporation for the
18 purpose of electing directors, the shareholders shall be ex-
19 pressly so advised in the proxy statement or other informa-
20 tional material distributed in advance of their vote upon the
21 amendment.

22 “(4) SAVINGS.—(A)(i) No shares of stock issued pursu-
23 ant to paragraphs (1)(B), (1)(C), or (2) shall carry rights to
24 share in distributions made to shareholders under subsections
25 (j) and (m).

1 “(ii) Notwithstanding the issuance of additional shares of
2 stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional
3 Corporation shall continue to apply the ratio last computed
4 under subsection (m) before the date of the enactment of the
5 Alaska Native Claims Settlement Act Amendments of 1987
6 for purposes of distributing funds under subsections (j) and
7 (m).

8 “(B) The issuance of additional shares of stock pursuant
9 to paragraphs (1)(B), (1)(C), or (2) shall not affect the division
10 and distribution of revenues under subsection (i).

11 “(C) No provision of this Act shall limit the right of a
12 Regional Corporation to take any action authorized under the
13 laws of the jurisdiction of incorporation so long as such action
14 is consistent with the provisions of this Act.”.

15 SETTLEMENT COMMON STOCK

16 SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h))
17 is amended to read as follows:

18 “(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as
19 otherwise expressly provided in this Act, Settlement
20 Common Stock of a Regional Corporation shall—

21 “(i) carry a right to vote in elections for the board
22 of directors and on such other questions as properly
23 may be presented to shareholders;

24 “(ii) permit the holder to receive dividends or
25 other distributions from the corporation; and

1 “(iii) vest in the holder all rights of a shareholder
2 in a business corporation organized under the laws of
3 the State.

4 “(B) Except as otherwise provided in this subsection
5 and in subsection (r), Settlement Common Stock, inchoate
6 rights thereto, and any dividends paid or distributions made
7 with respect thereto (other than dividends or distributions of
8 stock made pursuant to subsection (g)(2)) may not be—

9 “(i) sold;

10 “(ii) pledged;

11 “(iii) subjected to a lien or judgment execution;

12 “(iv) assigned in present or future;

13 “(v) treated as an asset in bankruptcy estate; or

14 “(vi) otherwise alienated.

15 “(C) The restrictions set forth in subparagraph (B) shall
16 not preclude a transfer of Settlement Common Stock to—

17 “(i) Natives or descendants of Natives—

18 “(I) pursuant to a court decree of separation,
19 divorce, or child support, or

20 “(II) by a holder who is a member of a pro-
21 fessional organization, association, or board that
22 limits the ability of the holder to practice his or
23 her profession because the holder holds Settle-
24 ment Common Stock; or

1 “(ii) a child, grandchild, niece, or nephew of a
2 holder as an inter vivos gift from the holder.

3 “(D) A transfer made pursuant to subparagraph (C)(ii)
4 shall not subject the holder or his or her child, grandchild,
5 niece, or nephew to any form of Federal, State, or local
6 taxation.

7 “(2) INHERITANCE OF SETTLEMENT COMMON
8 STOCK.—(A) Upon the death of a holder of Settlement
9 Common Stock, ownership of such stock shall be transferred
10 in accordance with the last will and testament of such holder
11 or under applicable laws of intestate succession. In the event
12 that the holder fails to dispose of his or her stock by will and
13 has no heirs under applicable laws of intestate succession, the
14 stock shall escheat to the issuing Regional Corporation and
15 canceled in accordance with law.

16 “(B) A Regional Corporation shall have the right to
17 purchase at fair value Settlement Common Stock transferred
18 under applicable laws of intestate succession to a person not
19 a Native or a descendant of a Native after the date of the
20 enactment of the Alaska Native Claims Settlement Act
21 Amendments of 1987 if the corporation—

22 “(i) issued such stock, and

23 “(ii) amends its articles of incorporation to author-
24 ize such purchases.

1 The corporation may exercise the right granted by this sub-
2 paragraph at any time within ninety days after the date that
3 the corporation either determines the decedent's heirs in ac-
4 cordance with the laws of the State or receives notice that
5 such heirs have been determined, whichever later occurs.

6 "(C) Settlement Common Stock of a Regional Corpora-
7 tion—

8 "(i) transferred by will or under applicable laws of
9 intestate succession after the date of the enactment of
10 the Alaska Native Claims Settlement Act Amendments
11 of 1987, or

12 "(ii) transferred by any means prior to the date of
13 the enactment of the Alaska Native Claims Settlement
14 Act Amendments of 1987,

15 to a person not a Native or a descendant of a Native shall not
16 carry voting rights. If at a later date such stock is lawfully
17 transferred to a Native or a descendant of a Native, voting
18 rights shall be automatically restored.

19 "(3) REPLACEMENT COMMON STOCK.—(A) On the
20 date on which alienability restrictions terminate in accord-
21 ance with the provisions of this Act, all Settlement Common
22 Stock previously issued by a Regional Corporation shall be
23 deemed canceled, and shares of Replacement Common Stock
24 of the appropriate class shall be issued to each shareholder,
25 share for share, subject only to subparagraph (B) and to such

1 restrictions consistent with this Act as may be provided by
2 the articles of incorporation of the corporation or in agree-
3 ments between the corporation and individual shareholders.

4 “(B)(i) Replacement Common Stock issued in exchange
5 for Settlement Common Stock issued subject to the restric-
6 tion authorized by subsection (g)(1)(B)(iii) shall bear a legend
7 indicating that the stock will eventually be canceled in ac-
8 cordance with the requirements of that subsection.

9 “(ii) The board of directors of the corporation shall ap-
10 prove a resolution to provide that each share of Settlement
11 Common Stock issued pursuant to subsection (g)(1)(A) to the
12 class of shareholders who were not residents of villages in the
13 region incorporated pursuant to this Act shall be exchanged
14 either for—

15 “(I) a share of Replacement Common Stock that
16 carries the right to share in distribution made to such
17 shareholders under subsections (j) and (m), or

18 “(II) a share of Replacement Common Stock that
19 does not carry such right together with a separate,
20 nonvoting security that represents only such right.

21 “(C) The articles of incorporation of the Regional Cor-
22 poration shall be deemed amended to authorize the issuance
23 of Replacement Common Stock and the security described in
24 subparagraph (B)(ii)(III).

1 “(D) Prior to the date on which the restrictions imposed
2 by paragraph (1)(B) terminate, a Regional Corporation may
3 amend its articles of incorporation to impose upon the Re-
4 placement Common Stock to be issued pursuant to subpara-
5 graph (A) one or more of the following—

6 “(i) a restriction denying voting rights to any
7 holder of Replacement Common Stock who is not a
8 Native or a descendant of a Native;

9 “(ii) a restriction granting the Regional Corpora-
10 tion, or the Regional Corporation and members of the
11 shareholder’s immediate family who are Natives or de-
12 scendants of Natives, on reasonable terms, the first
13 right to purchase the Replacement Common Stock of
14 the shareholder prior to the sale or transfer of such
15 stock (other than a transfer by will or intestate succes-
16 sion) to any other party, including a transfer in satis-
17 faction of a lien, writ of attachment, judgment execu-
18 tion, pledge, or other encumbrance; and

19 “(iii) any other term, restriction, limitation, or
20 provision permitted under the laws of the State.

21 “(E) Replacement Common Stock issued pursuant to
22 subparagraph (A) shall not be subject to involuntary alien-
23 ation based upon any asserted or unasserted legal obligation
24 arising prior to the issuance of such stock.”.

1 PURCHASE OF SETTLEMENT COMMON STOCK BY THE
2 ISSUING REGIONAL CORPORATION

3 SEC. 6. Section 7 (43 U.S.C. 1606) is amended by
4 adding at the end thereof the following new subsection:

5 "(r)(1) AUTHORIZATION TO PURCHASE.—A Regional
6 Corporation may amend its articles of incorporation to—

7 "(A) permit the corporation to purchase any or all
8 shares of its Settlement Common Stock then issued
9 and outstanding (except when the corporation is unable
10 to pay its debts as they become due in the usual course
11 of business), and

12 "(B) permit the shareholders of the corporation to
13 sell any or all their Settlement Common Stock to the
14 corporation,
15 on a willing seller basis.

16 "(2) SOURCE OF FUNDS TO PURCHASE.—(A) An
17 amendment authorized by paragraph (1) shall require that
18 payment for shares of Settlement Common Stock purchased
19 by the corporation shall be made out of—

20 "(i) unreserved or unrestricted earned surplus of
21 the corporation,

22 "(ii) net profits for the fiscal year in which the
23 purchase is being made and for the preceding fiscal
24 year, or

1 “(iii) the excess of the assets of the corporation
2 over its liabilities.

3 “(B) For purposes of this paragraph, net profits derived
4 from the exploitation or liquidation of timber resources or the
5 subsurface estate of land may be determined without consid-
6 eration of depletion of those assets resulting from lapse of
7 time, consumption, liquidation, or exploitation.

8 “(3) REQUIRED ACTIONS.—An amendment authorized
9 by paragraph (1) shall require that—

10 “(A) shares of Settlement Common Stock pur-
11 chased by the corporation shall be canceled in accord-
12 ance with law,

13 “(B) the board of directors of the corporation shall
14 determine a price at which such a purchase will be
15 made, and

16 “(C) each holder of Settlement Common Stock
17 shall be given the same opportunity to participate in
18 any purchase offer made by the corporation as is given
19 to any other holder of such stock.

20 “(4) VALUATION OF STOCK.—In determining a price
21 pursuant to paragraph (3)(B), the board of directors of the
22 corporation, at its discretion, may exclude the value of—

23 “(A) land, or any interest in land, received by the
24 corporation pursuant to this Act if such land or interest
25 in land—

1 “(i) is committed by the corporation to tradi-
2 tional or cultural uses, or

3 “(ii) is of speculative value on the date such
4 determination is made; and

5 “(B) the corporation's right to receive distribu-
6 tions under subsections (i) or (j) to the extent that such
7 rights are based upon land, or any interest in land,
8 owned by another Native Corporation that—

9 “(i) is committed by that Native Corporation
10 to traditional or cultural uses, or

11 “(ii) is of speculative value on the date such
12 determination is made.

13 Such exclusions shall be disclosed to the holders of Settle-
14 ment Common Stock of the corporation in the offer to pur-
15 chase made by the corporation.”.

16 VILLAGE, URBAN, AND GROUP CORPORATIONS

17 SEC. 7. Subsection (c) of section 8 (43 U.S.C. 1607(c))
18 is amended to read as follows:

19 “(c)(1) APPLICABILITY OF SECTION 7.—The provisions
20 of subsections (g), (h), (o), and (r) of section 7 of this Act shall
21 apply in all respects to Village Corporations, Urban Corpora-
22 tions, and Group Corporations.

23 “(2) DURATION OF ALIENABILITY RESTRICTIONS.—

24 (A) Alienability restrictions imposed on settlement Common
25 Stock issued by a Village Corporation, Urban Corporation, or

1 Group Corporation shall continue indefinitely unless termi-
2 nated in accordance with the provisions of this subsection.

3 “(B) A Village Corporation, Urban Corporation, or
4 Group Corporation may amend its articles of incorporation to
5 terminate alienability restrictions. Such amendment shall—

6 “(i) specify the time of termination, either by es-
7 tablishing a date certain or by describing the specific
8 event upon which the restrictions shall terminate, and

9 “(ii) be considered by the shareholders of the cor-
10 poration only once prior to December 18, 1991.

11 “(C) The rejection of an amendment authorized by para-
12 graph (1) shall not preclude consideration of subsequent
13 amendments to terminate alienability restrictions. Such
14 amendments may be considered and voted on only once annu-
15 ally after December 18, 1991.

16 “(3) BRISTOL BAY OPTION.—Notwithstanding any
17 other provision of law, paragraph (2) shall not apply to a
18 Village Corporation or Group Corporation in the Aleut or
19 Bristol Bay regions if the board of directors of such corpora-
20 tion approves, no later than one year after the date of the
21 enactment of the Alaska Native Claims Settlement Act
22 Amendments of 1987, a resolution electing the application of
23 section 38 in lieu of paragraph (2).

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20 “(b) BASIC PROCEDURE.—(1)(A) An amendment or res-
21 olution described in subsection (a) may be approved by the
22 board of directors of a Native Corporation in accordance with
23 the bylaws. If it approves the amendment or resolution, the
24 board shall direct that the amendment or resolution be sub-
25 mitted to a vote at the next annual meeting, or at a special
26 meeting (if the board, at its discretion, chooses to schedule

1 such special meeting), of the shareholders. One or more such
2 amendments or resolutions may be submitted to the share-
3 holders and voted upon at one meeting.

4 “(B) Within thirty days of the date on which it approves
5 an amendment authorized by section 38 or a resolution au-
6 thorized by section 40, the board of directors shall, by first-
7 class mail, notify the shareholders of such approval. The
8 notice shall consist only of a copy of the approved amend-
9 ment or resolution and a statement of the date of approval.
10 In no event, shall the approved amendment of resolution be
11 submitted to the shareholders for a vote sooner than seven
12 months after the date of approval.

13 “(2)(A) A written or printed notice (including a proxy
14 statement if required under applicable law), setting forth the
15 amendment or resolution approved pursuant to paragraph (1)
16 or a summary of the changes to be effected, together with
17 any amendment or resolution approved pursuant to subsec-
18 tion (c)(1) and the statements described in subsection (c)(1)(B)
19 shall be sent by first-class mail or hand-delivered to each
20 shareholder of record entitled to vote at his or her address as
21 it appears in the records of the Native Corporation not less
22 than fifty days nor more than sixty days before the meeting of
23 the shareholders. The corporation may also communicate
24 with its shareholders at any time and in any manner permit-
25 ted under the laws of the State.

1 “(B) Notwithstanding any other provision of law, the
2 board of directors, at its discretion, may exclude from a com-
3 munication made to the Native Corporation’s shareholders in
4 connection with an amendment or resolution approved pursu-
5 ant to paragraph (1) information concerning the value of—

6 “(i) land, or any interest in land, received by the
7 corporation pursuant to this Act if such land or interest
8 in land is committed by the corporation to traditional
9 or cultural uses or is of speculative value on the date
10 such communication is prepared, or

11 “(ii) the corporation’s right to receive distributions
12 under subsection 7(i) or subsection 7(j) to the extent
13 such rights are based upon land, or any interest in
14 land, owned by another Native Corporation that—

15 “(I) is committed by that Native Corporation
16 to traditional or cultural uses, or

17 “(II) is of speculative value on the date such
18 communication is prepared.

19 Such exclusions shall be disclosed by the shareholders of the
20 corporation in such communication.

21 “(C) If the board of directors determines, for quorum
22 purposes or otherwise, that it is necessary to postpone or
23 adjourn the date of a previously-noticed meeting, it may, by
24 giving notice to shareholders, set a new date not more than
25 forty-five days later than the original date without being re-

1 quired to send shareholders a new notice or proxy statement
2 setting forth the amendment or resolution or a summary of
3 changes to be effected. If, however, the new date that is set
4 is more than forty-five days after the original date, a written
5 or printed notice (including a proxy statement if required by
6 applicable law), setting forth the amendment or resolution or
7 a summary of the changes to be effected, shall be delivered or
8 sent to shareholders not less than thirty days nor more than
9 forty-five days prior to the new meeting date.

10 “(c) SHAREHOLDER PETITIONS.—(1)(A) With respect
11 to an amendment or resolution authorized by section
12 7(g)(1)(B), 7(g)(2)(B)(iii)(I), 37, 38, or 40, the holders of
13 shares representing 25 per centum of the total voting power
14 of a Native Corporation may petition the board of directors to
15 approve and submit such amendment or resolution to a vote
16 of the shareholders in accordance with the provisions of this
17 subsection and subsection (b).

18 “(B) The requirements of the laws of the State pertain-
19 ing to the solicitation of proxies shall govern solicitation of
20 signatures for any such petition, except that the requirements
21 of Federal law shall apply with respect to any petition to be
22 submitted to a Native Corporation with a class of equity se-
23 curities registered pursuant to the Securities Exchange Act
24 of 1934, as amended (48 stat. 881). If a petition meets the
25 applicable solicitation requirements and—

1 “(i) the board agrees with such petition, the board
2 shall submit the amendment or resolution and either
3 the proponents’ statement or its own statement in sup-
4 port of the amendment or resolution to the sharehold-
5 ers for a vote, or

6 “(ii) the board disagrees with the petition for any
7 reason, the board shall submit the amendment or reso-
8 lution and the proponents’ statement to the sharehold-
9 ers and may, at its discretion, submit an opposing
10 statement or an alternative amendment or resolution.

11 “(C) In the event of a petition concerning a resolution
12 or amendment proposed pursuant to section 37(a)(2), the
13 board of directors shall be required to submit such a resolu-
14 tion or amendment to a vote only if—

15 “(i) the petition is received no later than one hun-
16 dred and twenty days after the date of the mailing of
17 the notice required by subsection (b)(1)(B), and

18 “(ii) the amendment (or resolution) whose ap-
19 proval is announced in the notice provides for the ter-
20 mination of alienability restrictions or the continuation
21 of such restrictions pursuant to section 38 or for the
22 conveyance of corporate assets pursuant to section 40
23 for less than fair market value consideration.

24 “(2) Subsection (b)(1)(B) and paragraph (1) of this sub-
25 section shall not apply to the Bristol Bay Native Corporation,

1 any Regional Corporation that elects application of section
2 39 in lieu of section 38 pursuant to section 39(a), or a Village
3 Corporation in the Bristol Bay region that elects the applica-
4 tion of section 38 in lieu of section 8(c)(2) pursuant to section
5 8(c)(3). Insofar as they are not inconsistent with subsection
6 (e), the laws of the State shall govern any shareholder right
7 of petition for such corporation.

8 “(d) VOTING STANDARDS.—(1) Except as provided in
9 paragraph (2), an amendment or resolution described in sub-
10 section (a) shall be considered to be adopted by the share-
11 holders of a Native Corporation if it receives the affirmative
12 vote of shares representing—

13 “(A) at least a majority of the total voting power
14 of the corporation, or

15 “(B) some level of total voting power of the cor-
16 poration greater than a majority (but not greater than
17 two-thirds of the total voting power of the corporation)
18 if the corporation establishes such a level by an amend-
19 ment to its articles of incorporation.

20 “(2)(A)(i) The voting standard for consideration of an
21 amendment authorized by section 38 or 39 may be modified
22 in accordance with the provisions of this subparagraph at the
23 discretion of the board of directors of a Native Corporation.
24 Once a voting standard has been modified in this manner, it
25 shall not be changed under any circumstances.

1 “(ii) No later than seven months prior to the consider-
2 ation of an amendment authorized by section 38 or 39 by the
3 shareholders of a Native Corporation, the board of directors
4 may send by first-class mail a voting standard ballot to each
5 holder of Settlement Common Stock or other stock of the
6 corporation entitled to vote on an amendment authorized by
7 section 38 or 39. The ballot shall include—

8 “(I) a recommendation from the board on what
9 the minimum vote to adopt an amendment authorized
10 by section 38 or 39 should be (in no event shall the
11 board recommend a minimum vote lower than a major-
12 ity of 51 per centum of the total voting power of the
13 corporation or higher than two-thirds of the total
14 voting power of the corporation);

15 “(II) a statement that the minimum vote recom-
16 mended by the board will be sufficient to adopt an
17 amendment authorized by section 38 or 39 if the mini-
18 mum vote represents a majority of the voting power of
19 the corporation actually voting on the amendment; and

20 “(III) a request to the shareholders that they sig-
21 nify their approval or disapproval of the recommenda-
22 tion of the board on the ballot and return the ballot by
23 a date certain to the corporation.

1 The board shall provide for the return of the ballots by mail
2 and may also provide for personal collection of some or all of
3 the ballots.

4 “(iii) No later than four months after the mailing of a
5 voting standard ballot authorized by clause (ii), the board
6 shall tabulate the ballots that have been returned. The rec-
7 ommendation of the board shall be considered to be adopted
8 if—

9 “(I) shareholders holding shares of stock repre-
10 senting at least a majority of the total voting power of
11 the corporation for purposes of considering an amend-
12 ment authorized by sections 38 and 39 have voted and
13 returned ballots in time for the tabulation, and

14 “(II) shareholders holding shares of stock repre-
15 senting a majority of the voting power of the corpora-
16 tion (as defined in subclause (I)) actually voting the
17 ballots have voted to approve the recommendation.

18 “(iv) The board shall immediately notify the sharehold-
19 ers of the results of a tabulation conducted pursuant to clause
20 (iii) by first-class mail. The rejection of a recommendation by
21 the board shall not preclude the board from submitting a sub-
22 sequent recommendation in accordance with the provisions of
23 this subparagraph. If the board chooses not to submit a sub-
24 sequent recommendation, then the voting standard specified

1 in paragraph (1) shall apply to consideration of an amend-
2 ment authorized by section 38 or 39.

3 “(B) Once a voting standard is established pursuant to
4 subparagraph (A), an amendment authorized by section 38 or
5 39 shall be considered to be adopted by the shareholders of a
6 Native Corporation if the amendment receives the affirmative
7 vote of shares that—

8 “(i) represent a majority of the voting power of
9 the corporation actually voting, and

10 “(ii) meet the minimum vote required under the
11 voting standard established pursuant to subparagraph
12 (A),

13 so long as the shares voting on the amendment, in aggregate,
14 represent at least a majority of the total voting power of the
15 corporation.

16 “(3) Notwithstanding paragraph (1) or any other provi-
17 sion of this section, a Native Corporation in amending its
18 articles of incorporation pursuant to section 7(g)(2) to author-
19 ize the issuance of a new class or series of stock may provide
20 that a majority (or more than a majority) of the shares of
21 such class or series must vote in favor of an amendment or
22 resolution described in subsection (a) (other than an amend-
23 ment authorized by section 8(c)(2) or section 38 or section
24 39) in order for such amendment or resolution to be adopted.

1 “(e) VOTING POWER.—For the purposes of this section
2 (excluding subsection (d)(2)(A)(iii)), the determination of the
3 total voting power of a Native Corporation shall include all
4 outstanding shares of stock that carry voting rights except
5 shares that are not permitted to vote on the amendment or
6 resolution in question because of restrictions in law or in the
7 articles of incorporation of the corporation.”.

8 DISSENTERS RIGHTS

9 SEC. 9. The Alaska Native Claims Settlement Act of
10 1971, as amended, is further amended by adding the follow-
11 ing new section:

12 “DISSENTERS RIGHTS

13 “SEC. 37. (a) COVERAGE.—(1) Notwithstanding the
14 laws of the State—

15 “(A) if the shareholders of a Native Corporation
16 fail to adopt an amendment authorized by section
17 8(c)(2) to terminate alienability restrictions, a share-
18 holder who voted for the amendment may request pay-
19 ment from the corporation for all of his or her shares
20 of Settlement Common Stock;

21 “(B) if the shareholders of a Native Corporation
22 adopt an amendment authorized by section 38(c)(1) to
23 continue alienability restrictions without issuing alien-
24 able common stock pursuant to section 38(g), a share-
25 holder who voted against the amendment may request

1 payment from the corporation for all of his or her
2 shares of Settlement Common Stock; or

3 “(C) if the shareholders of a Native Corporation
4 adopt a resolution authorized by section 40 to convey
5 assets of the corporation to a qualified transferee entity
6 for less than fair market value consideration, a share-
7 holder who voted against the resolution may request
8 from the corporation payment for all of his or her
9 shares of Settlement Common Stock.

10 “(2)(A) A request for payment made pursuant to para-
11 graph (1)(A) shall be honored only if contemporaneously with
12 the vote giving rise to the request, the corporation approved
13 a resolution providing for the purchase of Settlement
14 Common Stock from dissenting shareholders.

15 “(B) A request for payment made pursuant to paragraph
16 (1)(B) shall be honored.

17 “(C) A request for payment made pursuant to paragraph
18 (1)(C) shall be honored only if—

19 “(i) the corporation is the Bristol Bay Native Cor-
20 poration or a Village Corporation in the Bristol Bay
21 region that elects the application of section 38 pursu-
22 ant to section 8(c)(3); or

23 “(ii) contemporaneously with the vote giving rise
24 to the request, the corporation approved a resolution

1 providing for the purchase of Settlement Common
2 Stock from dissenting shareholders.

3 “(b) RELATIONSHIP TO STATE PROCEDURE.—(1)
4 Except as provided in paragraph (2) and section 38(d), and
5 insofar as they are not inconsistent with this section and sec-
6 tion 38(g), the laws of the State governing the right of a
7 dissenting shareholder to demand and receive payment for his
8 or her shares shall apply to requests for payment honored
9 pursuant to subsection (a)(2).

10 “(2) The board of directors of a Native Corporation may
11 approve a resolution to provide a dissenting shareholder peri-
12 ods of time longer than those provided in the laws of the
13 State to take actions required under paragraph (1).

14 “(c) VALUATION OF STOCK.—Before a vote described
15 in subsection (a)(1), the board of directors of a Native Corpo-
16 ration may approve a resolution to provide that one or more
17 of the following conditions will prevail in the event a request
18 for payment is honored pursuant to subsection (a)(2)—

19 “(1) the Settlement Common Stock shall be
20 valued as restricted stock;

21 “(2) the value of land, or an interest in land, re-
22 ceived by the corporation pursuant to this Act shall be
23 excluded by the shareholder making the request for
24 payment, the corporation purchasing the Settlement
25 Common Stock of the shareholder, and any court de-

1 termining the fair value of the shares of Settlement
2 Common Stock to be purchased if such land, or inter-
3 est in land—

4 “(A) is committed by the corporation to tra-
5 ditional or cultural uses, or

6 “(B) is of speculative value on the date the
7 vote described in subsection (a)(1) is conducted;
8 and

9 “(3) the value of the corporation’s right to receive
10 distributions under subsections (i) or (j) shall be ex-
11 cluded by the shareholder making the request for pay-
12 ment, the corporation purchasing the Settlement
13 Common Stock of the shareholder, and any court de-
14 termining the fair value of the shares of Settlement
15 Common Stock to be purchased to the extent that such
16 rights are based upon land, or any interest in land,
17 owned by another Native Corporation that—

18 “(A) is committed by that Native Corpora-
19 tion to traditional or cultural uses, or

20 “(B) is of speculative value of the date such
21 determination is made.

22 “(d) FORM OF PAYMENT.—(1) Before a vote described
23 in subsection (a)(1), the board of directors of a Native Corpo-
24 ration may approve a resolution to provide that in the event a
25 request for payment is honored pursuant to subsection (a)(2)

1 payments to each dissenting shareholder shall be made by the
2 corporation through the issuance of a negotiable note in the
3 principal amount of the payment due, which shall be secured
4 by—

5 “(A) a payment bond issued by an insurance com-
6 pany or financial institution;

7 “(B) the deposit in escrow of securities or prop-
8 erty having a fair market value equal to at least 125
9 per centum of the face value of the note; or

10 “(C) a lien upon the real property interests of the
11 corporation valued at 125 per centum or more of the
12 face amount of the note, other than lands or interests
13 in land that are committed to traditional or cultural
14 uses and the percentage interest in the corporation’s
15 timber resources and subsurface estate that exceeds its
16 percentage interest in revenues from such property
17 under section 7(i).

18 “(2) Any note issued pursuant to paragraph (1) shall
19 provide that—

20 “(A) interest shall be paid semi-annually, begin-
21 ning as of the date on which the vote described in sub-
22 section (a)(1) occurred, at the rate applicable on such
23 date to obligations of the United States having a matu-
24 rity date of one year, and

1 “(B) the principal amount and any undistributed
2 interest of such note shall be payable to the former
3 shareholder or his or her heirs or devisees at any time
4 at the option of the corporation but in no event later
5 than the date that is five years after the date on which
6 the vote from which the former shareholder dissented
7 was conducted.”.

8 DURATION AND EXTENSION OF RESTRICTIONS ON ALIEN-
9 ATION OF SETTLEMENT COMMON STOCK ISSUED BY
10 REGIONAL CORPORATIONS

11 SEC. 10. The Alaska Native Claims Settlement Act, as
12 amended, is further amended by adding the following new
13 section:

14 “DURATION AND EXTENSION OF RESTRICTIONS ON ALIEN-
15 ATION OF SETTLEMENT COMMON STOCK ISSUED BY
16 REGIONAL CORPORATIONS

17 “SEC. 38. (a) COVERAGE.—The provisions of this sec-
18 tion shall apply to all Regional Corporations and to Village
19 Corporations and Group Corporations that make the election
20 described in section 8(c)(2)(3). No other Native Corporation
21 shall be subject, in any respect, to the provisions of this
22 section.

23 “(b) TERMINATION OF RESTRICTIONS IN 1991.—
24 (1)(A) Alienability restrictions shall continue only until De-
25 cember 18, 1991. A Native Corporation described in subsec-

1 tion (a) may extend such restrictions beyond December 18,
2 1991, in accordance with the provisions of this subsection.

3 “(c) BASIC PROCEDURE TO EXTEND RESTRICTIONS
4 BEYOND 1991.—(1) The board of directors of a Native Cor-
5 poration described in subsection (a) shall, at least once prior
6 to January 1, 1991, approve, and submit to a vote of the
7 shareholders, an amendment to the articles of incorporation
8 of the corporation to extend alienability restrictions. If the
9 amendment is not adopted by the shareholders, the board of
10 directors may submit another such amendment to the share-
11 holders once or more a year until December 18, 1991.

12 “(2) An amendment authorized by paragraph (1) and
13 any amendment authorized by paragraph (3) may provide for
14 an extension of alienability restrictions for an indefinite
15 period of time or a period of time specified in years.

16 “(3) If an amendment adopted by the shareholders of a
17 Native Corporation described in subsection (a) pursuant to
18 paragraph (1) or this paragraph extends alienability restric-
19 tions for a period of time specified in years, the termination of
20 the restrictions at the close of such period may be postponed
21 if a further amendment to the articles of incorporation of the
22 corporation is adopted to extend the restrictions. There shall
23 be no limit on the number of such amendments that can be
24 adopted. Such amendments shall not be effective to extend

1 the restrictions unless adopted before the expiration of the
2 period of extension then in force.

3 “(d) AUTOMATIC TERMINATION OF RESTRICTIONS ON
4 ALIENATION AT THE END OF AN EXTENSION.—If an
5 amendment extending alienability restrictions for a period of
6 time specified in years is adopted pursuant to subsection (c),
7 the restrictions shall automatically terminate at the end of
8 such period unless the restrictions are extended in accordance
9 with the provisions of subsection (c).

10 “(e) TERMINATION OF AN EXTENSION OF RESTRIC-
11 TIONS ON ALIENATION.—(1) Notwithstanding any other
12 provision of this section, a Native Corporation that adopts an
13 amendment pursuant to subsection (c) to extend alienability
14 restrictions may later amend its articles of incorporation to
15 terminate the restrictions. Such amendment shall specify the
16 time of termination, either by establishing a date certain or
17 by describing the specific event upon which the restrictions
18 shall terminate.

19 “(2) The rejection of an amendment described in para-
20 graph (1) by the shareholders shall not preclude consideration
21 of subsequent amendments to terminate alienability restric-
22 tions.

23 “(f) IDENTIFICATION AND COMPENSATION OF DIS-
24 SENTERS.—(1) If a Native Corporation amends its articles of

1 incorporation pursuant to subsection (c) to extend alienability
2 restrictions, a shareholder who—

3 “(A) voted against such amendment, and

4 “(B) desires to relinquish his or her Settlement
5 Common Stock in exchange for the stock or payment
6 authorized by the board of directors pursuant to para-
7 graph (2),

8 shall notify the corporation within ninety days of the date of
9 the vote of the shareholders on the amendment of his or her
10 desire.

11 “(2) Within one hundred and twenty days of the date of
12 the vote described in paragraph (1), the board of directors of
13 the corporation shall approve either—

14 “(A) a resolution to provide that each shareholder
15 who has notified the corporation pursuant to paragraph
16 (1) that he or she desires to relinquish his or her Set-
17 tlement Common Stock shall receive alienable common
18 stock in exchange for his or her Settlement Common
19 Stock pursuant to subsection (f), or

20 “(B) a resolution to provide that each shareholder
21 who has notified the corporation pursuant to paragraph
22 (1) that he or she desires to relinquish his or her Set-
23 tlement Common Stock shall be given an opportunity
24 to request payment for his or her Settlement Common
25 Stock pursuant to section 37(a)(1)(B).

1 “(3) This subsection shall apply only to the first exten-
2 sion of the restrictions imposed by section 7(h)(1)(B) approved
3 by the corporation. No dissenters rights of any sort shall be
4 permitted in connection with subsequent extensions of such
5 restrictions.

6 “(g) ISSUANCE OF ALIENABLE COMMON STOCK.—
7 (1)(A) If the board of directors of a Native Corporation ap-
8 proves a resolution providing for the issuance of alienable
9 common stock pursuant to paragraph (4)(B)(i), no later than
10 sixty days after the approval of the resolution (but in no
11 event before December 18, 1991), the Settlement Common
12 Stock of each shareholder who has notified the corporation
13 pursuant to paragraph (4)(A) that he or she prefers not to
14 retain his or her Settlement Common Stock shall be deemed
15 canceled, and shares of alienable common stock of the appro-
16 priate class shall be issued to such shareholder, share for
17 share, subject only to subparagraph (B) and to such restric-
18 tions consistent with this Act as may be provided by the arti-
19 cles of incorporation of the corporation or in agreements be-
20 tween the corporation and individual shareholders.

21 “(B)(i) Alienable common stock issued in exchange for
22 Settlement Common Stock issued subject to the restriction
23 authorized by section 7(g)(1)(B)(iii) shall bear a legend indi-
24 cating that the stock will eventually be canceled in accord-
25 ance with the requirements of that section.

1 “(ii) In the resolution authorized by subsection (e)(2),
2 the board of directors shall provide that each share of Settle-
3 ment Common Stock issued pursuant to section 7(g)(1)(A) to
4 the class of shareholders who were not residents of villages in
5 the region incorporated pursuant to this Act shall be ex-
6 changed either for—

7 “(I) a share of alienable common stock that car-
8 ries the right to share in distributions made to such
9 shareholders under sections 7(j) and 7(m), or

10 “(II) a share of alienable common stock that does
11 not carry such right together with a separate, non-
12 voting security that represents only such right.

13 “(iii) In the resolution authorized by subsection (e)(2),
14 the board of directors may impose upon the alienable
15 common stock to be issued in exchange for Settlement
16 Common Stock one or more of the following—

17 “(I) a restriction granting the corporation, or the
18 corporation and members of the shareholder’s immedi-
19 ate family who are Natives or descendants of Natives,
20 or reasonable terms, the first right to purchase the
21 alienable common stock of the shareholder prior to the
22 sale or transfer of such stock (other than a transfer by
23 will or interstate succession) to any other party, includ-
24 ing a transfer in satisfaction of a lien, writ of attach-

1 ment, judgment execution, pledge, or other encum-
2 brance; or

3 “(II) any other term, restriction, limitation, or
4 other provision permitted under the laws of the State.

5 “(iv) No share of alienable common stock issued pursu-
6 ant to paragraph (1) shall carry voting rights if it is owned,
7 legally or beneficially, by a person not a Native or a descend-
8 ant of a Native. The issuing Native Corporation is hereby
9 authorized to enforce this restriction.

10 “(2)(A) A purchaser or other transferee of shares of
11 alienable common stock issued pursuant to paragraph (1)
12 shall, as a condition of the obligation of the issuing Native
13 Corporation to transfer such shares on the books of the cor-
14 poration, deliver to the corporation or transfer agent, as the
15 case may be, a statement on a form prescribed by the corpo-
16 ration identifying the number of such shares to be transferred
17 to such transferee and certifying—

18 “(i) that such transferee is or is not a Native or a
19 descendant of a Native;

20 “(ii) that such transferee, if not a Native or a de-
21 scendant of a Native, understands that shares of such
22 alienable common stock shall carry no voting rights so
23 long as such shares are held by such transferee or any
24 subsequent transferee not a Native or a descendant of
25 a Native;

1 “(iii) that such transferee, if a purchaser, under-
2 stands that such acquisition may be subject to section
3 13(d) of the Securities Exchange Act of 1934, as
4 amended, and the regulations of the Securities and Ex-
5 change Commission promulgated thereunder; and

6 “(iv) that such transferee will be the sole benefi-
7 cial owner of such shares (if not, the transferee must
8 certify as to the identities of all beneficial owners of
9 such shares).

10 “(B) The statement required by subparagraph (A) shall
11 be prima facie evidence of the matters certified therein and
12 may reasonably be relied upon by the corporation in effecting
13 a transfer on its books. The statement, however, shall not be
14 binding on the corporation.

15 “(C) For purposes of this paragraph, a beneficial owner
16 of a security includes any person (including a corporation,
17 partnership, trust, association, or other entity) who, directly
18 or indirectly, through any contract, arrangement, understand-
19 ing, relationship, or otherwise has or shares—

20 “(i) voting power, which includes the power to
21 vote, or to direct the voting of, such security; or

22 “(ii) investment power, which includes the power
23 to dispose, or to direct the disposition of, such security.

24 “(D) Any person who, directly or indirectly, creates or
25 uses a trust, proxy, power of attorney, pooling arrangement,

1 or any other contract, arrangement, or device with the pur-
 2 pose or effect of divesting such person of beneficial ownership
 3 of a security or preventing the vesting of such beneficial own-
 4 ership as part of a plan or scheme to evade the requirements
 5 imposed by this section or section 13(d) of the Securities Ex-
 6 change Act of 1934, as amended, shall be deemed for pur-
 7 poses of such sections to be the beneficial owner of such
 8 security.

9 “(4) The statement required by paragraph (1) shall be
 10 verified by the transferee before a notary public or other au-
 11 thorized official in accordance with the laws of the State of
 12 residence of the transferee or in which the transfer is made.”.

13 RECAPITALIZATION OPTION FOR REGIONAL
 14 CORPORATIONS

15 SEC. 11. The Alaska Native Claims Settlement Act, as
 16 amended, is further amended by adding the following new
 17 section:

18 “RECAPITALIZATION OPTION FOR REGIONAL
 19 CORPORATIONS

20 “SEC. 39. (a) COVERAGE.—Notwithstanding any other
 21 provision of law, the board of directors of a Regional Corpo-
 22 ration may approve a resolution electing the application of
 23 this section in lieu of section 38.

24 “(b) TERMINATION OF RESTRICTIONS IN 1991.—
 25 Alienability restrictions shall continue only until Decem-
 26 ber 18, 1991. A Regional Corporation electing the applica-

tion of this section may extend such restrictions beyond December 18, 1991, only in accordance with the provisions of this subsection.

“(c) BASIC PROCEDURE TO EXTEND RESTRICTIONS BEYOND 1991.—(1) The board of directors of a Regional Corporation electing the application of this section may approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend, as a part of a recapitalization plan that provides for the issuance of voting alienable common stock to all holders of Settlement Common Stock of the corporation, alienability restrictions. If the amendment is not adopted by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

“(2) An amendment submitted pursuant to paragraph (1) and any subsequent amendment submitted pursuant to paragraph (3) may provide for an extension of alienability restrictions for—

“(A) an indefinite period of time,

“(B) a period of time specified in years, or

“(C) a period of time that shall end upon the occurrence of a specified event or condition, including a shift in the capital structure of the corporation such that stock other than Settlement Common Stock repre-

1 sents a majority of the total voting power of the corpo-
2 ration for the purpose of electing directors.

3 “(3) If an amendment adopted pursuant to paragraph (1)
4 or this paragraph extends alienability restrictions for a speci-
5 fied period of time, the termination of the restrictions at the
6 close of such period may be postponed if a further amend-
7 ment to the articles of incorporation of the corporation is
8 adopted to extend the restrictions. There shall be no limit on
9 the number of such amendments that can be adopted. Such
10 amendments shall not be effective to extend the restrictions
11 unless adopted before the expiration of the period of exten-
12 sion then in force.

13 “(4)(A) In soliciting the votes of the shareholders of a
14 corporation on a recapitalization plan that includes an exten-
15 sion of alienability restrictions, the board of directors may ask
16 the shareholders to approve the plan as a whole, pursuant to
17 a single shareholder vote.

18 “(B) Notwithstanding any other provision of this Act,
19 the issuance of stock pursuant to section 7(g)(2) may be au-
20 thorized by the single shareholder vote authorized by sub-
21 paragraph (A) subject to the voting standard established in
22 accordance with section 36(d).

23 “(c) AUTOMATIC TERMINATION OF RESTRICTIONS AT
24 THE END OF AN EXTENSION.—If an amendment extending
25 alienability restrictions for a specified period is adopted pur-

1 suant to subsection (c), the restrictions shall automatically
2 terminate at the end of such period unless the restrictions are
3 extended in accordance with the provisions of subsection
4 (c)(3).

5 “(d) TERMINATION OF AN EXTENSION OF RESTRIC-
6 TIONS ON ALIENATION.—(1) Notwithstanding any other
7 provisions of this section, a Regional Corporation that adopts
8 an amendment pursuant to subsection (c) to extend alien-
9 ability restrictions may later amend its articles of incorpora-
10 tion to terminate the restrictions. Such amendment shall
11 specify the time of termination, either by establishing a date
12 certain or by describing the specific event upon which the
13 restrictions shall terminate.

14 “(2) The rejection of an amendment described in para-
15 graph (1) by the shareholders shall not preclude consideration
16 of subsequent amendments to terminate alienability restric-
17 tions.

18 “(e) ADEQUACY OF A RECAPITALIZATION PLAN.—If a
19 recapitalization plan adopted pursuant to subsection (c)(1)
20 distributes voting alienable common stock to each holder of
21 shares of Settlement Common Stock (issued pursuant to sec-
22 tion 7(g)(1)(A)) that carries aggregate dividend and liquida-
23 tion rights equivalent to those carried by such shares of Set-
24 tlement Common Stock (except for rights to distributions
25 under sections 7(j) and 7(m)), then such holder shall have no

1 right under section 37 to further compensation from the cor-
 2 poration with respect to action taken under this section.”.

3 CONVEYANCE OF ASSETS TO A QUALIFIED TRANSFEREE
 4 ENTITY

5 SEC. 12. The Alaska Native Claims Settlement Act of
 6 1971, as amended, is further amended by adding at the end
 7 thereof the following new section:

8 “CONVEYANCE OF ASSETS TO A QUALIFIED TRANSFEREE
 9 ENTITY

10 “SEC. 40. (a) AUTHORIZATION TO CONVEY.—(1)(A) A
 11 Native Corporation may convey any or all of its assets, in-
 12 cluding title to land, or interests in land, to a qualified trans-
 13 feree entity for no consideration or for such consideration as
 14 its shareholders approve if—

15 “(i) a resolution approving of such conveyance is
 16 adopted by a vote of the shareholders of the Native
 17 Corporation in accordance with the provisions of sec-
 18 tion 36,

19 “(ii) the Native Corporation has no shares of
 20 stock outstanding other than Settlement Common
 21 Stock (or stock issued to Natives who have attained
 22 the age of sixty-five pursuant to section 7(g)(2) if that
 23 stock is subject to all the restrictions listed in section
 24 7(g)(2)(B)(ii)(I), and

25 “(iii) the Native Corporation has adopted a plan
 26 to satisfy its outstanding debts and obligations.

1 “(B) Upon petition of no less than 25 per centum of the
2 former shareholders of a Native Corporation that has been
3 involuntarily dissolved under the laws of the State, a court of
4 the State of appropriate jurisdiction shall order the convey-
5 ance of any or all of the assets of the Native Corporation,
6 including title to surface estate in land, to a qualified trans-
7 feree entity for no consideration or for such consideration as
8 the former shareholders of the corporation approve if—

9 “(i) a resolution approving such conveyance is
10 adopted by a vote of the former shareholders of the
11 Native Corporation in accordance with the provisions
12 of section 36 and under the supervision of the court,
13 but without the requirement that the resolution be
14 adopted by the board of directors of the corporation,

15 “(ii) the Native Corporation has not issued shares
16 of stock other than Settlement Common Stock (or
17 stock issued to Natives who have attained the age of
18 sixty-five pursuant to section 7(g)(2) if that stock is
19 subject to all the restrictions listed in section
20 7(g)(2)(B)(ii)(I)), and

21 “(iii) all outstanding debts and obligations of the
22 dissolved Native Corporation have been satisfied under
23 the supervision of the court.

24 “(C)(i) Notwithstanding the provisions of subparagraphs
25 (A) and (B)—

1 “(I) no subsurface estate, or any interest in sub-
2 surface estate, received by a Regional Corporation pur-
3 suant to this Act shall be conveyed to a qualified trans-
4 feree entity,

5 “(II) no land received by a Regional Corporation
6 pursuant to this Act whose timber resources are in the
7 process of development shall be conveyed to a qualified
8 transferee entity, and

9 “(III) no timber resources on land received by a
10 Regional Corporation pursuant to this Act and con-
11 veyed to a qualified transferee entity shall be commer-
12 cially developed, or encumbered as security for a debt,
13 by such qualified transferee entity.

14 “(ii) A conveyance pursuant to subparagraphs (A) and
15 (B) not in conformance with the provisions of this subsection
16 shall be void ab initio and shall be given no effect in any
17 court.

18 “(2) Resolutions described in paragraph (1) shall set
19 forth the terms under which the transfer of assets is to be
20 made, including whether the payment of consideration by the
21 qualified transferee entity will be required.

22 “(b) QUALIFICATIONS AND POWERS.—(1) An entity
23 shall be qualified to accept a conveyance of assets pursuant
24 to subsection (a) if such entity—

1 “(A) is organized pursuant to, or recognized by,
2 State or Federal law (including a traditional Native
3 council or a Native council organized pursuant to the
4 Act of June 18, 1934 (48 Stat. 987), as amended);

5 “(B) has a membership composed of persons whose in-
6 terest in the entity is nontransferable; and

7 “(C) provides full membership for every person
8 who—

9 “(i) holds Settlement Common Stock in the
10 Native Corporation proposing to make the con-
11 veyance of assets on the day before the date of
12 such conveyance, or

13 “(ii) held stock in the involuntarily dissolved
14 Native Corporation whose assets are being con-
15 veyed pursuant to a court order on the day before
16 the date of the dissolution of the corporation.

17 “(2) (A) Notwithstanding any other provision of State or
18 Federal law, a qualified transferee entity is hereby authorized
19 to—

20 “(i) admit to full membership Natives and non-Na-
21 tives for the purpose of complying with paragraph
22 (1)(C);

23 “(ii) distribute cash and other assets to its mem-
24 bers; and

1 “(iii) convey fee title to land, or an interest in
2 land, to a person, organization, or governmental entity
3 but only if such conveyance is—

4 “(I) authorized by subparagraph (B), or

5 “(II) required under subsection (d).

6 “(B) Notwithstanding any other provision of State or
7 Federal law, a qualified transferee entity is hereby authorized
8 to—

9 “(i) reconvey and distribute land, and interests in
10 land, pursuant to sections 14(e) and 21(j) of this Act;
11 and

12 “(ii) exchange land, or interests in land, pursuant
13 to the provisions of section 22(f) of this Act and section
14 1302(h) of the Alaska National Interest Lands Conser-
15 vation Act of 1980;

16 on the same basis as the Native Corporation that conveyed
17 such land, or interests in land, to the qualified transferee
18 entity pursuant to subsection (a).

19 “(C) A conveyance by a qualified transferee entity of a
20 fee interest in land, or interests in land, not in conformance
21 with the provisions of this subsection shall be void ab initio
22 and shall be given no effect in any court.

23 “(c) SAVINGS.—(1) Notwithstanding any other provision
24 of law, the provisions of this Act (including sections 14(c),
25 14(f), 14(g), 21(d), and 21(e)) and section 907 of the Alaska

1 National Interest Lands Conservation Act of 1980 (43
2 U.S.C. 1636) shall continue to apply to any land, or interest
3 in land, conveyed to a qualified transferee entity as if the
4 land, or interest in land, were still held by the Native Corpo-
5 ration that conveyed the land, or interest in land, pursuant to
6 subsection (a).

7 “(2) Notwithstanding any other provision of law, the
8 conveyance of any assets pursuant to subsection (a) to a
9 qualified transferee entity shall not affect the applicability or
10 enforcement (including specific enforcement) of any contract,
11 judgment, lien, or other obligation (including an obligation
12 arising under section 7(i)) to which such assets were express-
13 ly or potentially subject immediately before such conveyance.

14 “(3)(A) A claim made under paragraphs (1) and (2) shall
15 be enforceable against the qualified transferee entity holding
16 the land, interest in land, or other assets in question.

17 “(B) The sovereign immunity, if any, of a qualified
18 transferee entity shall be deemed waived for purposes of—

19 “(i) allowing the enforcement of a claim pursuant
20 to subparagraph (A), and

21 “(ii) enabling the State and its political subdivi-
22 sions to tax (and condemn for public purposes) lands,
23 and interests in land, in accordance with the provisions
24 of section 907 of the Alaska National Interest Lands
25 Conservation Act of 1980 (43 U.S.C. 1636).

1 “(d) TRANSACTIONAL IMMUNITY FROM TAXATION,
2 BASIS, SAVINGS.—(1) If a Native Corporation conveys
3 assets or stock—

4 “(A) to a qualified transferee entity pursuant to
5 this section; or

6 “(B) to a partnership, corporation, or other entity
7 pursuant to other law (and following the completion of
8 the conveyance, the partnership, corporation, or other
9 entity is wholly owned by the corporation or its
10 shareholders or by both the corporation and its
11 shareholders);

12 neither the conveyance of the assets or stock, the receipt of
13 the assets or stock, nor the distribution of stock or other ben-
14 efcial interests in the qualified transferee entity (or partner-
15 ship, corporation, or other entity) receiving the assets or
16 stock to the shareholders of the corporation as part of the
17 conveyance shall subject the corporation, its shareholders, or
18 the qualified transferee entity (or partnership, corporation, or
19 other entity) accepting the conveyance to any form of Fed-
20 eral, State, or local taxation with respect to such convey-
21 ance, receipt, or distribution.

22 “(2) The basis to the qualified transferee entity (or part-
23 nership, corporation, or other entity) accepting a conveyance
24 of any asset or stock conveyed pursuant to this section (or

1 other law) shall be the same as it would be in the hands of
2 the Native Corporation making the conveyance.

3 “(3)(A) Sections 21(c) and 21(d) shall continue to apply
4 to any asset conveyed to a partnership, corporation, or other
5 entity, which on the date of such conveyance is wholly owned
6 by the corporation or its shareholders or by both the corpora-
7 tion and its shareholders, to the same extent that such sec-
8 tions applied to such asset when held by the corporation.

9 “(B) Section 907 of the Alaska National Interest Lands
10 Conservation Act of 1980, as amended, shall continue to
11 apply to any asset conveyed to a partnership, corporation, or
12 other entity as long as a majority of the total voting power of
13 such entity or beneficial interest therein is held by the corpo-
14 ration making the conveyance, its shareholders on the date of
15 conveyance, or both the corporation and its shareholders.”.

16 ALASKA LAND BANK

17 SEC. 13. Section 907 of the Alaska National Interest
18 Lands Conservation Act of 1980 (43 U.S.C. 1636) is
19 amended—

20 (a) by striking out “subsection (c)(2)” throughout
21 the section and inserting in lieu thereof “subsection
22 (d)(1)”;

23 (b) in the proviso of subsection (a), by striking out
24 “lands not owned by landowners described in subsec-
25 tion (c)(2) shall not” and inserting in lieu thereof “no
26 lands shall”;

1 (c) by amending subsections (c), (d), and (e) to
2 read as follows:

3 “(c)(1) BENEFITS TO PRIVATE LANDOWNERS.—In ad-
4 dition to any requirement of applicable law, the appropriate
5 Secretary is authorized to provide technical and other assist-
6 ance with respect to fire control, trespass control, resource
7 and land use planning, and the protection, maintenance, and
8 enhancement of any special values of the land subject to the
9 agreement, all with or without reimbursement as agreed
10 upon by the parties, so long as the landowner is in compli-
11 ance with the agreement.

12 “(2) The provisions of section 21(e) of the Alaska Native
13 Claims Settlement Act of 1971, as amended, shall apply to
14 all lands which are subject to an agreement under this section
15 so long as the parties to the agreement are in compliance
16 therewith.”.

17 “(d) AUTOMATIC PROTECTIONS FOR LANDS CON-
18 VEYED PURSUANT TO THE ALASKA NATIVE CLAIMS SET-
19 TLEMENT ACT.—(1) Notwithstanding any other provision of
20 law, all land, and interests in land, conveyed pursuant to the
21 Alaska Native Claims Settlement Act of 1971, as amended,
22 to any Native individual, Native Corporation, or qualified
23 transferee entity (as defined in section 40 of the Alaska
24 Native Claims Settlement Act of 1971, as amended), shall be

1 exempt, so long as such land and interests are not developed
2 (or leased or sold to third parties) from—

3 “(A) adverse possession and similar claims based
4 upon estoppel;

5 “(B) real property taxes by any governmental
6 entity;

7 “(C) judgments resulting from any claim based
8 upon, or arising under, title 11 of the United States
9 Code, other insolvency or moratorium laws, or other
10 laws generally affecting creditors’ rights;

11 “(D) judgments in any action at law or in equity
12 to recover sums owed or penalties incurred by any
13 Native Corporation or qualified transferee entity or any
14 employee, officer, director, or shareholder of such cor-
15 poration or entity, unless this exemption is waived in a
16 valid and binding contract executed prior to the com-
17 mencement of such action; and

18 “(E) involuntary distributions or conveyances re-
19 lated to the involuntary dissolution of a Native Corpo-
20 ration.

21 “(2) DEFINITIONS.—(A) For purposes of this subsec-
22 tion, the term—

23 “(i) ‘Developed’ means a purposeful modification
24 of land, or an interest in land, from its original state
25 that effectuates a condition of gainful and productive

1 present use without further substantial modification.
2 Surveying, construction of roads, providing utilities, or
3 other similar actions, which are normally considered to
4 be component parts of the development process but do
5 not create the condition described in the preceding sen-
6 tence, shall not constitute a developed state within the
7 meaning of this clause. In order to terminate the ex-
8 emptions listed in paragraph (1), land, or an interest in
9 land, must be developed for purposes other than explo-
10 ration, and the exemptions will be terminated only
11 with respect to the smallest practicable tract actually
12 used in the developed state;

13 “(ii) ‘Exploration’ means the examination and in-
14 vestigation of undeveloped land to determine the exist-
15 ence of subsurface nonrenewable resources; and

16 “(iii) ‘Lease’ means a grant of primary possession
17 entered into for gainful purposes with a determinable
18 fee remaining in the hands of the grantor. With respect
19 to a lease that conveys rights of exploration and devel-
20 opment, the exemptions listed in paragraph (1) shall
21 continue with respect to that portion of the leased tract
22 that is used solely for the purposes of exploration.

23 “(B) For purposes of this subsection—

24 “(i) land shall not be considered developed solely
25 as a result of—

1 “(I) the construction, installation, or place-
2 ment upon such land of any structure, fixture,
3 device, or other improvement intended to enable,
4 assist, or otherwise further subsistence or other
5 customary or traditional uses of such land, or

6 “(II) the receipt by the holder of the land of
7 fees related to hunting, fishing, and guiding activi-
8 ties conducted on such land;

9 “(ii) land upon which timber resources are being
10 harvested shall be considered developed only during
11 the period of such harvest and only to the extent that
12 such land is integrally related to the timber harvesting
13 operation; and

14 “(iii) land subdivided by a State or local platting
15 authority on the basis of a subdivision plat submitted
16 by, or on behalf of, the holder of the land, shall be con-
17 sidered developed on the date of final approval of the
18 subdivision plat unless the subdivided property is a re-
19 mainder parcel.

20 “(3) ACTION BY A TRUSTEE.—(A) Except as provided
21 in this paragraph and in section 14(c)(3) of the Alaska Native
22 Claims Settlement Act of 1971, as amended, no trustee, re-
23 ceiver, or custodian vested under applicable Federal or State
24 law with a right, title, or interest of a Native individual,
25 Native Corporation, or qualified transferee entity may—

1 “(i) assign or lease to a third party,

2 “(ii) commence development or use of, or

3 “(iii) convey to a third party,

4 any right, title, or interest in any land, or interests in land,
5 subject to paragraph (1).

6 “(B) The prohibitions of subparagraph (A) shall not
7 apply—

8 “(i) when the actions of such trustee, receiver, or
9 custodian are for purposes of exploration or pursuant to
10 a judgment in law or in equity (or arbitration award)
11 arising out of any claim under section 7(i) or section
12 14(c) of the Alaska Native Claims Settlement Act of
13 1971, as amended;

14 “(ii) to any land, or interest in land, which has
15 been developed or leased prior to the vesting of the
16 trustee, receiver, or custodian with the right, title, or
17 interest of the Native Corporation or qualified transfer-
18 ee entity; or

19 “(iii) to any land, or interest in land, which has
20 been specifically pledged as security for any loan or
21 specifically committed to any commercial transaction in
22 a valid and binding agreement.

23 “(4) EXCLUSIONS, REATTACHMENT OF EXEMP-
24 TIONS.—(A) The exemptions listed in paragraph (1) shall not
25 apply to any land, or interest in land, which is—

1 “(i) developed (or leased or sold to a third party);

2 or

3 “(ii) held by a Native Corporation in which the
4 shares of stock held by Natives and descendants of Na-
5 tives represent less than a majority of the total voting
6 power of the corporation for the purpose of electing
7 directors.

8 “(B) The exemptions described in paragraphs (1)(C),
9 (1)(D), and (1)(E) shall not apply to any land, or interest in
10 land—

11 “(i) if, and for so long as, such land or interest is
12 specifically pledged as security for any loan or specifi-
13 cally committed to any commercial transaction in a
14 valid and binding agreement, and

15 “(ii) to the extent necessary to enforce a judgment
16 in any action at law or in equity (or any arbitration
17 award) arising out of any claim under section 7(i) or
18 section 14(c) of the Alaska Native Claims Settlement
19 Act of 1971, as amended.

20 “(C) If the exemptions listed in paragraph (1) are termi-
21 nated with respect to land, or an interest in land, as a result
22 of development (or a lease to a third party), and such land, or
23 interest in land, subsequently reverts to an undeveloped state
24 (or the third-party lease is terminated), then the exemptions

1 shall again apply to such land, or interest in land, in accord-
2 ance with the provisions of this subsection.

3 “(5) TAX RECAPTURE UPON SUBDIVISION PLAT AP-
4 PROVAL.—Upon the final approval by an appropriate govern-
5 ment authority of a subdivision plat submitted by, or on
6 behalf of, a Native individual, Native Corporation, or quali-
7 fied transferee entity with respect to land subject to the ex-
8 emption described in paragraph (1)(B), such individual, corpo-
9 ration, or qualified transferee entity shall pay all State and
10 local property taxes on the smallest practicable tract integral-
11 ly related to the subdivision project that would have been
12 incurred by the individual, corporation, or qualified transferee
13 entity on such land (excluding the value of subsurface re-
14 sources and timber) in the absence of the exemption described
15 in paragraph (1)(B) during the thirty months prior to the date
16 of the final approval of the plat. The State and local property
17 taxes (together with interest at the rate of 5 per centum per
18 annum commencing on the date of final approval of the subdivi-
19 sion plat) shall be paid in equal semiannual installments
20 over a two-year period commencing on the date six months
21 after the date of final approval of the subdivision plat.

22 “(6) SAVINGS.—(A) Nothing in this subsection shall be
23 construed to impair, or otherwise affect in any manner, any
24 contract or other obligation that was entered into prior to the

1 date of the enactment of the Alaska Native Claims Settle-
2 ment Act Amendments of 1971.

3 “(B) Nothing in this subsection shall be construed to
4 impair, supersede, or otherwise affect in any manner the op-
5 eration of section 21(d) of the Alaska Native Claims Settle-
6 ment Act of 1971, as amended.

7 “(e) CONDEMNATION.—Notwithstanding any other pro-
8 vision of law, all land subject to an agreement made pursuant
9 to subsection (a) and all land, and interests in land, conveyed
10 pursuant to the Alaska Native Claims Settlement Act of
11 1971, as amended, to any Native individual, Native Corpora-
12 tion, or qualified transferee entity (as defined in section 40 of
13 the Alaska Native Claims Settlement Act of 1971, as amend-
14 ed) shall be subject to condemnation for public purposes in
15 accordance with the provisions of applicable State law.”; and

16 (d) by adding at the end thereof the following new
17 subsection:

18 “(g) STATE JURISDICTION.—Except as expressly pro-
19 vided in subsection (d), nothing in this section shall be con-
20 strued as affecting the civil or criminal jurisdiction of the
21 State of Alaska.”.

22 CONFORMING AMENDMENTS

23 SEC. 14. (a) SECTION 21.—Subsection (f) of section 21
24 (43 U.S.C. 1620(f)) is amended by striking out “January 1,
25 1992” and inserting in lieu thereof “such time as alienability
26 restrictions are terminated”.

1 (b) SECTION 30.—Subsection (b) of section 30 (43
2 U.S.C. 1627(b)) is amended by striking out “prior to Decem-
3 ber 19, 1991” and inserting in lieu thereof “while the Settle-
4 ment Common Stock of all corporations subject to merger or
5 consolidation remains subject to alienability restrictions.”.

6 (c) SECURITIES EXCHANGE ACT OF 1934.—Section
7 13(d)(1) of the Securities Exchange Act of 1934 is amended
8 by inserting “or any equity security issued by an Alaska
9 Native Corporation pursuant to section 38(c)(5) of the Alaska
10 Native Claims Settlement Act of 1971, as amended” after
11 “Investment Company Act of 1940”.

12 (d) SECTION 7.—Subsection (o) of section 7 (43 U.S.C.
13 1606) is amended to strike everything following the word
14 “stockholder” except the period at the end of the subsection.

15 SEVERABILITY

16 SEC. 15. Section 27 (85 Stat. 688) is amended to read
17 as follows:

18 “SEVERABILITY

19 “SEC. 27. The provisions of this Act and the Alaska
20 Native Claims Settlement Act Amendments of 1987 are sev-
21 erable and, if any provision of either Act is determined by a
22 court of competent jurisdiction to be invalid, such invalidity
23 shall not affect any other provision of such Act.”.

24 SECURITIES LAWS EXEMPTION

25 SEC. 16. Section 28 (43 U.S.C. 1625) is amended to
26 read as follows:

1 "SECURITIES LAWS EXEMPTION

2 "SEC. 28. (a) Any Native Corporation shall be exempt
3 from the provisions, as amended, of the Investment Company
4 Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48
5 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat.
6 881) until the earlier of the day after—

7 "(1) the date on which the corporation issues any
8 shares of stock other than Settlement Common Stock
9 in a transaction where—

10 "(A) the transaction or the shares are not
11 otherwise exempt from the securities laws; and

12 "(B) the shares are issued to persons other
13 than—

14 "(i) individuals who held shares in the
15 corporation on the date of the enactment of
16 the Alaska Native Claims Settlement Act
17 Amendments of 1987;

18 "(ii) Natives,

19 "(iii) descendants of Natives, or

20 "(iv) entities established for the sole
21 benefit of Natives or descendants of Natives;

22 or

23 "(2) the date on which alienability restrictions are
24 terminated.

1 “(b) Nothing in this section shall be construed to require
2 or imply that any Native Corporation shall, or shall not, be
3 subject to provisions of the Acts listed in subsection (a) after
4 any of the dates described in subsection (a).

5 “(c)(1) Any Native Corporation that, but for this sec-
6 tion, would be subject to the provisions of the Securities Ex-
7 change Act of 1934 shall transmit to its shareholders each
8 year a report containing substantially all the information re-
9 quired to be included in an annual report to shareholders by a
10 corporation subject to that Act.

11 “(2) For purposes of determining the applicability of the
12 registration requirements of the Securities Exchange Act of
13 1934 on or after the dates described in subsections (a)(1),
14 (a)(2), and (a)(3), holders of Settlement Common Stock shall
15 be excluded from the calculation of the number of sharehold-
16 ers of record pursuant to section 12(g) of that Act.”

17 “(d) Notwithstanding subsection (a) or any other provi-
18 sion of law, the provisions of the Investment Company Act of
19 1940 shall not apply to any Native Corporation prior to Jan-
20 uary 1, 2001.”.

21 ELIGIBILITY FOR FEDERAL PROGRAMS, MINORITY STATUS

22 SEC. 17. Section 29 (43 U.S.C. 1626) is amended by
23 adding the following new subsection:

24 “(c) In determining the eligibility of any household or
25 individual Native or descendant of a Native to—

26 “(1) participate in the Food Stamp Program,

1 “(2) receive assistance under the Social Security
2 Act, or

3 “(3) receive financial assistance or benefits under
4 any other Federal program or federally assisted
5 program,

6 any compensation (including in-kind or cash dividends on
7 stock received from a Native Corporation to the extent that
8 such dividends do not, in aggregate, exceed \$2,000 per indi-
9 vidual per annum), stock (including stock issued by a Native
10 Corporation as a dividend or distribution on stock), land or
11 interest in land (including land or an interest in land received
12 from a Native Corporation as a dividend or distribution on
13 stock), or other benefits received by such individual, such
14 household, or any member of such household under this Act
15 shall not be taken into account, regardless of whether such
16 compensation, stock, land or interest in land, or other benefit
17 is subject to Federal, State, or local taxation.

18 “(d) Notwithstanding any other provision of this Act or
19 of any other law, Alaska Natives shall remain eligible for all
20 Federal Indian programs on the same basis as other Native
21 Americans.

22 “(e) For all purposes of Federal law, a Native Corpora-
23 tion shall be considered to be a corporation owned and con-
24 trolled by Natives if Natives or descendants of Natives own
25 shares of stock representing 50 per centum, or more, of the

1 total voting power of the corporation for the purpose of elect-
2 ing directors.

3 “(f)(1) Section 3 of Public Law 97-451 (96 Stat. 2448)
4 is amended by inserting “or which is administered by the
5 United States pursuant to section 14(g) of Public Law
6 92-203, as amended” after “alienation” in subsection (3) and
7 subsection (4).

8 “(2) The amendment made by subsection (a) shall be
9 effective as if originally included in section 3 of Public Law
10 97-451.”.

11 JUDICIAL REVIEW

12 SEC. 18. (a) STATUTE OF LIMITATIONS.—(1) Notwith-
13 standing any other provision of law, a civil action to contest
14 the constitutionality of any amendment made by, or other
15 provision of, this Act (the Alaska Native Claims Settlement
16 Act Amendments of 1987) shall be barred unless—

17 (A) if the civil action challenges—

18 (i) the issuance or distribution of Settlement
19 Common Stock for less than fair market value
20 consideration pursuant to section 7(g)(1)(B) or
21 7(g)(2)(C)(ii) of the Alaska Native Claims Settle-
22 ment Act of 1971, as amended;

23 (ii) an extension of alienability restrictions
24 that involves the issuance of stock pursuant to
25 section 38(g) or 39 of the Alaska Native Claims
26 Settlement Act of 1971, as amended; or

1 (iii) the conveyance of assets to a qualified
2 transferee entity for less than fair market value
3 consideration pursuant to section 40 of the Alaska
4 Native Claims Settlement Act of 1971, as
5 amended;

6 the civil action is filed within six months of the date of
7 the shareholder vote authorizing the challenged action
8 and a request for a declaratory judgment or injunctive
9 relief is made before the Native Corporation taking the
10 challenged action issues stock or conveys assets; or

11 (B) with respect to any other civil action; the civil
12 action, is filed within two years of the date of the en-
13 actment of this Act.

14 (2) Notwithstanding any other provision of this Act, no
15 Native Corporation taking an action described in paragraphs
16 (1)(A)(i), (1)(A)(ii), or (1)(A)(iii) shall issue stock or convey
17 assets within fourteen days of the date of the shareholder
18 vote authorizing such action.

19 (b) JURISDICTION AND PROCEDURE.—The United
20 States District Court for the District of Alaska shall have
21 exclusive original jurisdiction over any such action. The
22 action shall be heard and determined by a court of three
23 judges as provided in section 2284 of title 28 of the United
24 States Code. Any appeal of the final judgment in the action
25 shall be made directly to the United States Supreme Court.

1 (c) STATEMENT OF PURPOSE.—The purpose of the lim-
2 itation on legal challenges to this Act outlined in subsection
3 (a) is—

4 (1) to ensure that after the expiration of a reason-
5 able period of time, Native shareholders and their cor-
6 porations, the United States, and the State and its po-
7 litical subdivisions will be able to plan their affairs with
8 certainty in full reliance on the provisions of this Act,
9 and

10 (2) without infringing on the constitutional rights
11 of any individual, to minimize the possibility that the
12 United States will incur a monetary liability as a result
13 of the enactment of this Act.

14 (d) Notwithstanding any provision of this Act, in any
15 civil action challenging an amendment authorized by section
16 38 or 39, the court is authorized to issue an order extending
17 the restrictions imposed by section 7(h)(1)(B) on alienation of
18 Settlement Common Stock during the pendency of the action
19 and for a reasonable period thereafter sufficient to allow the
20 rejection or approval of the proposed amendment by the
21 shareholders of the Native Corporation involved. In deter-
22 mining whether to issue such order, the court shall consider
23 the irreparable damage that may occur if such restrictions are
24 terminated.

DISCLAIMER

1

2 SEC. 21. (a) No provision of this Act (the Alaska Native
3 Claims Settlement Act Amendments of 1987), amendment
4 made by this Act, exercise of authority pursuant to this Act
5 (including a conveyance of assets under section 40 of the
6 Alaska Native Claims Settlement Act, as amended, to a
7 qualified transferee entity), or change in the status of land
8 (including a change in ownership) effected under this Act
9 shall be construed to—

10

(1) enlarge or diminish or in any way affect the
11 scope of the governmental authority, if any, of any
12 Native organization, including any federally recognized
13 tribe, traditional Native council, Native council orga-
14 nized pursuant to the Act of June 18, 1934 (48 Stat.
15 987), as amended, or qualified transferee entity over
16 lands (including management of, or regulation of the
17 taking of, fish and wildlife) or over persons in Alaska;

18

(2) grant or deny any governmental authority to
19 such organization over lands (including management of,
20 or regulation of the taking of, fish and wildlife) or over
21 persons in Alaska; or

22

(3) create or validate or invalidate any assertion
23 by such organization of any form of governmental au-
24 thority over lands (including management of, or regula-

1 tion of the taking of, fish and wildlife) or over persons
2 in Alaska.

3 (b) No provision of this Act (the Alaska Native Claims
4 Settlement Act Amendments of 1987), amendment made by
5 this Act, exercise of authority pursuant to this Act (including
6 a conveyance of assets under section 40 of the Alaska Native
7 Claims Settlement Act to a qualified transferee entity), or
8 change in the status of land (including a change in ownership)
9 effected under this Act shall be construed to validate or inval-
10 idate or in any way affect any assertion that Indian country,
11 as defined in section 1115 of title 18, United States Code,
12 exists or does not exist in Alaska.

13 (c) No provision of this Act (the Alaska Native Claims
14 Settlement Act Amendments of 1987), amendment made by
15 this Act, exercise of authority pursuant to this Act (including
16 a conveyance of assets under section 40 of the Alaska Native
17 Claims Act to a qualified transferee entity), or change in the
18 status of land (including a change in ownership) effected
19 under this Act may be taken into account by any court in
20 determining—

21 (1) the existence of any governmental authority
22 described in subsection (a),

23 (2) the existence of Indian country within the
24 boundaries of the State of Alaska,

1 (3) any issue related to the existence of any gov-
2 ernmental authority described in subsection (a) or any
3 Indian country within the boundaries of the State of
4 Alaska, or

5 (4) the intent of Congress with regard to any of
6 the matters described in paragraphs (1), (2), or (3).

○

100TH CONGRESS
1ST SESSION

H. R. 278

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 30), 1987

Received

APRIL 2 (legislative day, MARCH 30), 1987

Read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) this Act may be cited as the "Alaska Native Claims
4 Settlement Act Amendments of 1987".

5 (b) Whenever, in this Act, an amendment is expressed in
6 terms of an amendment to a section or provision, the refer-
7 ence shall be considered to be made to a section or provision
8 of the Alaska Native Claims Settlement Act, as amended (43
9 U.S.C. 1601 et seq.).

CONGRESSIONAL FINDINGS

SEC. 2. Congress finds and declares—

(a) the Alaska Native Claims Settlement Act (ANCSA) was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based upon aboriginal land claims in a manner consistent with the real economic and social needs of the Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) the corporate model adopted by ANCSA is frequently ill-adapted to the reality of life in many Alaska Native villages and to traditional Native cultural values;

(c) although Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation have delayed the implementation of the settlement and significantly diminished its value;

(d) providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that ANCSA be amended to—

(A) provide the stockholders of each Native Corporation an opportunity to implement the set-

1 tlement in the manner which they determine is
2 best suited to their particular circumstances and
3 needs, including, but not limited to, an opportuni-
4 ty to decide the manner in which Alaska Natives
5 born after December 18, 1971, should participate
6 in the settlement and whether the business corpo-
7 ration is the most appropriate entity to hold legal
8 title to lands conveyed in partial settlement of ab-
9 original claims; and

10 (B) continue restrictions on the transfer of
11 stock of Native Corporations until such time as
12 the stockholders of a corporation may vote to ter-
13 minate such restrictions; and

14 (e) both ANCSA, as amended, and this Act are
15 Indian legislation enacted by Congress pursuant to its
16 plenary authority under the Commerce Clause to regu-
17 late Indian affairs.

18 NEW DEFINITIONS

19 SEC. 2. (a) Section 3 (43 U.S.C. 1602) is amended by
20 adding the word "group" after the word "individual," in sub-
21 section (h); striking the word "and" at the end of subsection
22 (k); and by striking the periods at the end of subsections (l)
23 and (m) and inserting, in lieu thereof, semicolons.

24 (b) Section 3 is further amended by adding the following
25 new subsections:

5 “(o) ‘descendant of a Native’ means a lineal descendant
6 of a Native or of an individual who would have been a Native
7 if he or she were alive on December 18, 1971, or an adoptee
8 of a Native or descendant of a Native whose adoption is rec-
9 ognized at law or in equity.”.

11 SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g))
12 is amended to read as follows:

20 “(2) Notwithstanding any other law, a Regional Corpo-
21 ration, if authorized by an amendment to its articles of incor-
22 poration, may issue up to one hundred shares of additional
23 Native common stock to—

24 “(A) Natives born after December 18, 1971;

25 “(B) Natives who have attained the age of sixty-
26 five; and

1 “(C) Natives who were eligible for enrollment
2 pursuant to section 5, but who were not so enrolled;
3 for no consideration or for such consideration and upon such
4 terms and conditions as may be specified in the articles of
5 incorporation or by a resolution of the board of directors pur-
6 suant to authority expressly vested in it by the articles of
7 incorporation.

8 “(3)(A) Notwithstanding any other provision of this Act
9 and in addition to any other existing authority, any Regional
10 Corporation, after the date of enactment of this paragraph,
11 may amend its articles of incorporation to authorize the issu-
12 ance of additional shares of stock as provided in this
13 paragraph.

14 “(B) Such shares of stock may be—

15 “(i) divided into classes and series within classes,
16 with preferences, limitations, and relative rights, in-
17 cluding, without limitation, dividend rights, voting
18 rights, liquidation preferences, and rights to share in
19 distributions made to stockholders under subsections (j)
20 and (m) of this section;

21 “(ii) subject to alienability restrictions not in
22 excess of the restrictions provided for in paragraph (1)
23 of subsection (h) of this section;

24 “(iii) restricted in issuance to—

1 “(a) Natives who have reached the age of
2 sixty-five; or

3 “(b) any other identifiable group of Natives,
4 where such group is defined in terms of general
5 applicability and, except as provided in subpara-
6 graph (H) of this paragraph, not in any way by
7 reference to place of residence, family, or position
8 as an officer, director, or employee of a Native
9 Corporation, or stockholder of a Native Corpora-
10 tion other than the issuing Corporation; and

11 “(iv) issued as a dividend or other distribution
12 upon outstanding shares of stock or for such consider-
13 ation as may be permitted by law;

14 as may be provided in the articles of incorporation or an
15 amendment thereto.

16 “(C) Any amendment to the articles of incorporation of
17 a Regional Corporation which permits the issuance of classes
18 or series of stock other than Native common stock shall
19 specify the maximum number of shares of any such class or
20 series and the maximum number of votes that may be held by
21 shares of such class or series.

22 “(D) During any period in which the restrictions on
23 alienation of Native common stock imposed by paragraph (1)
24 of section 7(h) are in effect, no stock may be issued under this

1 paragraph to a group of individuals composed only of employ-
2 ees, officers or directors of the Regional Corporation.

3 “(E) If any amendment to the articles of incorporation
4 permits the issuance of classes or series of stock which, when
5 issued, singly or in combination, may cause the outstanding
6 shares of Native common stock to represent less than a ma-
7 jority of the voting power of all stock in the Regional Corpo-
8 ration, the stockholders of such corporation shall be expressly
9 so advised in the proxy statement or other informational
10 material distributed in advance of their vote upon the
11 amendment.

12 “(F) In no event may shares of stock other than Native
13 common stock be issued more than thirteen months after the
14 date of the stockholder vote authorizing the issuance of such
15 stock if, as a result of the issuance of such stock, the out-
16 standing shares of Native common stock will represent less
17 than a majority of the voting power of all stock in the Re-
18 gional Corporation. The restriction of this subparagraph shall
19 be of no further force and effect if shares of stock previously
20 have been lawfully issued pursuant to this paragraph which
21 have caused the shares of the Native common stock to repre-
22 sent less than a majority of the voting power of all stock in
23 the Regional Corporation or if the restrictions upon alien-
24 ation of Native common stock provided for in paragraph (1)

1 of section 7(h) have expired under section 7a or have been
2 terminated under section 7(h) by vote of the stockholders.

3 “(G) Notwithstanding the issuance of additional shares
4 of Native common stock or new classes or series of stock
5 pursuant to this paragraph, the Regional Corporation shall
6 continue to apply the ratio last computed under subsection
7 (m) of this section before the date of enactment of this para-
8 graph for purposes of distributing funds under subsections (j)
9 and (m) of this section.

10 “(H) If shares of different classes or series have been
11 issued pursuant to this paragraph to nonvillage stockholders
12 as described in subsection (m), distributions payable under
13 subsections (j) and (m) of this section shall be made with re-
14 spect to such classes or series in accordance with the rights,
15 if any, of each class or series to share in such distributions as
16 provided in the articles of incorporation or an amendment
17 thereto and, if so provided, the right to share in such distribu-
18 tions may be established as a right or other security separate
19 from any other shares issued to such nonvillage
20 stockholders.

21 “(I) Common stock issued pursuant to this subsection
22 which carries the same rights and restrictions provided for in
23 section 7(h) or which is issued in substitution for Native
24 common stock shall be deemed to be Native common stock as

1 long as all such rights and restrictions are in effect with re-
2 spect thereto.

3 “(4) The issuance of additional shares of Native common
4 stock or other stock pursuant to paragraphs (2) and (3) of this
5 subsection shall have no affect on the division and distribu-
6 tion of revenues pursuant to subsection (i) of this section.”.

7 NATIVE COMMON STOCK: RIGHTS: ALIENATION

8 RESTRICTIONS

9 SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h))
10 is amended to read as follows:

11 “(h)(1)(A) Except as otherwise provided in this para-
12 graph and in paragraphs (3) and (4) of this subsection, Native
13 common stock of a Regional Corporation issued pursuant to
14 subsection (g) of this section shall—

15 “(i) carry a right to vote in elections for the board
16 of directors and on such other questions as properly
17 may be presented to stockholders;

18 (ii) permit the holder to receive dividends or other
19 distributions from the Regional Corporation; and

20 (iii) vest in the holder all rights of a stockholder in
21 a business corporation organized under the laws of the
22 State of Alaska.

23 “(B) Until the termination of such restrictions by the
24 stockholders under paragraph (2) of this subsection or pursu-
25 ant to section 7a, Native common stock, inchoate rights

1 thereto, and any dividends paid or distributions made with
2 respect thereto, may not be—

3 “(i) sold;

4 “(ii) pledged;

5 “(iii) subject to a lien or judgment execution;

6 “(iv) assigned in present or future;

7 “(v) treated as an asset in a bankruptcy estate; or

8 “(vi) otherwise alienated.

9 “(C) The limitation contained in subparagraph (B) of
10 this paragraph shall not apply to transfers of Native common
11 stock if such transfers are made to Natives or descendants of
12 Natives pursuant to a court decree of separation, divorce or
13 child support or by a stockholder who is a member of a pro-
14 fessional organization, association, or board which limits the
15 ability of that stockholder to practice his or her profession
16 because of holding stock issued under this section.

17 “(D) Except as provided in section 7a, the restrictions
18 on alienation of Native common stock provided in this para-
19 graph shall remain in effect until such time as the stockhold-
20 ers of a Regional Corporation vote to terminate such restric-
21 tions as provided in paragraph (2) of this subsection.

22 “(2)(A) Except as provided in subparagraph (F) of this
23 paragraph, a Regional Corporation may terminate the re-
24 strictions on alienation imposed on its Native common stock

1 by paragraph (1) of this subsection as provided in this
2 paragraph.

3 “(B) At any time after the date of enactment of this
4 paragraph, a resolution to terminate such restrictions may be
5 adopted by the board of directors on its own motion or pursu-
6 ant to a stockholders’ petition as provided in paragraph (6)(D)
7 of this subsection. A resolution of the board of directors of a
8 Regional Corporation to terminate such restrictions shall be
9 submitted to a vote of the stockholders in accordance with
10 the procedures set forth in paragraph (6) of this subsection.

11 “(C) A resolution to terminate restrictions adopted pur-
12 suant to this paragraph shall make provision for the time of
13 termination, either by the establishment of the date certain or
14 the description of a specific event upon which the restrictions
15 shall terminate.

16 “(D) The approval of a resolution under this paragraph
17 shall be considered to be an amendment to the articles of
18 incorporation of the Regional Corporation for the purposes of
19 paragraph (6) of this subsection. On the date of termination
20 as established in such resolution, all Native common stock
21 previously issued shall be deemed canceled and shares of
22 stock of the appropriate class shall be issued to each holder of
23 Native common stock, share for share, subject only to such
24 restrictions as may be provided in an amendment to the arti-
25 cles of incorporation adopted pursuant to paragraph (7) of

1 this subsection or in agreements between the corporation and
2 the individual stockholders.

3 “(E) The rejection of a resolution adopted pursuant to
4 this paragraph by the stockholders of a Regional Corporation
5 shall not preclude votes on subsequent resolutions adopted
6 and submitted to a vote pursuant to this paragraph.

7 “(F) Notwithstanding the provisions of this paragraph, if
8 the board of directors of the Bristol Bay Native Corporation
9 or any Village Corporation in the Bristol Bay region adopts,
10 within one year of the date of enactment of this paragraph, a
11 resolution electing to follow the procedures set forth in sec-
12 tion 7a of this Act, the provisions of this paragraph shall not
13 be applicable to such corporation.

14 “(3)(A) Upon the death of any holder of Native common
15 stock, ownership of such stock shall be transferred in accord-
16 ance with the last will and testament of such holder or under
17 applicable laws of intestate succession, except that, in the
18 event the deceased stockholder fails to dispose of all of his or
19 her Native common stock by will and if such stockholder has
20 no heirs under applicable laws of intestacy who are Natives
21 or descendants of Natives, such Native common stock shall
22 escheat to the appropriate Regional Corporation.

23 “(B) In the event that stock would be transferred by
24 devise or inheritance to a person not a Native or a descend-

1 ant of a Native, the Regional Corporation shall have the
2 right to purchase such stock for its fair market value.

3 “(4)(A) Notwithstanding the restrictions on alienation
4 imposed by paragraph (1) of this subsection, any Regional
5 Corporation is hereby authorized to amend its articles of in-
6 corporation to permit it to purchase and, for that purpose, its
7 stockholders to sell, any or all of its Native common stock
8 then issued and outstanding.

9 “(B) Payment for such stock shall be made out of—

10 “(i) unreserved or unrestricted earned surplus of
11 the corporation; or

12 “(ii) net profits for the fiscal year in which the
13 purchase is being made and for the preceding fiscal
14 year, except when the corporation is unable to pay its
15 debts as they become due in the usual course of
16 business.

17 “(C) For the purpose of this paragraph, net profits de-
18 rived from the exploitation or liquidation of timber resources
19 or subsurface estate may be determined without consideration
20 of depletion of those assets resulting from lapse of time, con-
21 sumption, liquidation, or exploitation.

22 “(D) Shares of stock purchased pursuant to this para-
23 graph shall become nonvoting treasury stock or may be can-
24 celed by the Regional Corporation in accordance with law.

1 “(E) In the case of each purchase of Native common
2 stock pursuant to this paragraph, the board of directors shall
3 determine a price at which such purchase will be made. Such
4 price, if determined in good faith, shall conclusively be pre-
5 sumed to be fair. In determining such price, the board of
6 directors, at its option, may exclude from such determination
7 the value of the land or any interest therein received by the
8 Regional Corporation pursuant to this Act which is commit-
9 ted by the corporation to Native traditional or cultural uses
10 or is of speculative or unknown value on the date such deter-
11 mination is made.

12 “(F) With respect to any purchase under this paragraph,
13 all holders of such Regional Corporation's Native common
14 stock shall be given a fair opportunity to participate in any
15 offer by the corporation to purchase shares of its Native
16 common stock on the same basis as is made available to any
17 holder of such stock.

18 “(5) Native common stock transferred through inherit-
19 ance to a person who is not a Native shall not carry voting
20 rights. The lapse of the right to vote in a holder of Native
21 common stock upon a transfer by inheritance or otherwise
22 may be restored by the adoption of an amendment to the
23 articles of incorporation, but only if such shares of stock are
24 held by a Native or a descendant of a Native.

1 “(6)(A) Notwithstanding any provision of Alaska law,
2 other than those which relate to proxy statements or solicita-
3 tions which are not inconsistent with this paragraph, and
4 except as provided in section 7a of this Act—

5 “(i) any amendment to the articles of incorpora-
6 tion of a Regional Corporation authorized by this sub-
7 section or subsection (g) of this section;

8 “(ii) a transfer of assets made pursuant to section
9 7b;

10 “(iii) a resolution described in paragraph 2(C) of
11 this subsection; or

12 “(iv) a resolution described in paragraph (B) of
13 this paragraph;

14 shall be approved as provided in this paragraph.

15 “(B) The board of directors shall adopt a resolution set-
16 ting forth the proposal and directing that it be submitted to a
17 vote at the annual, or a special, meeting of the stockholders.
18 One or more such amendments or resolutions may be submit-
19 ted to the stockholders and voted upon at one meeting.

20 “(C) A written or printed notice, setting forth the pro-
21 posal or summary of the changes to be effected, or the proxy
22 statement and related proxy material if required under appli-
23 cable law, shall be delivered by hand or sent by first class
24 mail to each stockholder of record entitled to vote not less
25 than fifty nor more than sixty days before the date of the

1 meeting at the address of such stockholder as it appears on
2 the records of the corporation.

3 “(D) With respect to any amendment or resolution de-
4 scribed in subparagraph (A) of this paragraph, if the holders
5 of at least 15 per centum or, in the case of an amendment to
6 terminate restrictions on the alienability of Native common
7 stock, one-third of the outstanding shares of Native common
8 stock entitled to be voted petition the board of directors to
9 adopt and submit such amendment or resolution to the vote
10 of the stockholders, the board of directors shall adopt a reso-
11 lution to that effect and submit it to the stockholders as pro-
12 vided in this paragraph. The procedural and disclosure re-
13 quirements pertaining to the solicitation of proxies under
14 State law shall govern solicitation of signatures on any such
15 petition. If the petition meets the aforementioned standards
16 and if—

17 “(i) the board of directors agrees with such peti-
18 tion, it shall submit the resolution and either the pro-
19 ponent’s statement or its own statement in support of
20 the resolution to the stockholders for a vote; or

21 “(ii) the board of directors disagrees with the peti-
22 tion for any reason, it shall submit the resolution and
23 the proponent’s statement to the stockholders and may,
24 at its discretion, submit an opposing statement and/or
25 an alternative resolution.

1 “(E)(i) An amendment to the articles of incorporation
2 that would have the effect of removing the restrictions on
3 alienation of Native common stock provided in paragraph (1)
4 of this subsection shall be approved if such amendment re-
5 ceives the affirmative vote of at least a majority of the out-
6 standing shares of Native common stock entitled to vote on
7 such amendment.

8 “(ii) Any other amendment or resolution described in
9 subparagraph (A) of this paragraph shall be approved—

10 “(a) if voted upon by at least 51 per centum of
11 the votes represented by the capital stock of the Re-
12 gional Corporation entitled to be voted on such amend-
13 ment or resolution; and

14 “(b) if such amendment or resolution receives the
15 affirmative vote of at least a majority of all votes cast,
16 subject to the right of the board of directors of the Regional
17 Corporation to provide a quorum or vote requirement greater
18 than subclause (a) or (b) of this clause, or both, and to the
19 right of the Regional Corporation in its articles of incorpora-
20 tion to provide a vote by classes of stock for all or any of
21 such actions.

22 “(F) If the result of a stockholder vote under this para-
23 graph is the continuation of the restrictions against alienation
24 of Native common stock, a stockholder who voted in favor of
25 termination of the restriction may demand and receive pay-

1 ment from the corporation for all of his or her shares, but
2 only if, contemporaneously with such vote, the stockholders
3 approve a resolution providing for such right. The procedure
4 established by Alaska law for the exercise of the right of a
5 dissenting stockholder shall be followed, if such right is made
6 available pursuant to this subparagraph.

7 “(G) A resolution adopted pursuant to subparagraph (F)
8 of this paragraph may provide that Native common stock
9 shall be valued on the basis set forth in section 7a(f)(2) or
10 that the form of payment to dissenting stockholders shall be
11 as provided in section 7a(f)(3).

12 “(7) Notwithstanding a stockholder vote to terminate
13 restrictions on alienation of Native common stock under
14 paragraph (2) of this subsection or the expiration of such re-
15 strictions pursuant to section 7a, a Regional Corporation,
16 prior to the effective date of such termination, may amend its
17 articles of incorporation to impose any restrictions upon the
18 replacement common stock issued pursuant to paragraph
19 2(D) of this subsection permitted under applicable law as well
20 as restrictions providing for—

21 “(A) the denial of voting rights to any holder of
22 such replacement common stock who is not a Native or
23 descendant of a Native; and

24 “(B) the granting to the corporation, or to the
25 corporation and the stockholder's immediate family, on

1 reasonable terms, the first right to purchase a stock-
2 holder's replacement common stock prior to the sale or
3 transfer of such stock, other than a transfer by inherit-
4 ance, to any other party, including a transfer in satis-
5 faction of a lien, writ of attachment, judgment execu-
6 tion, pledge, or other encumbrance."

7 BRISTOL BAY REGION: SPECIAL PROVISIONS

8 SEC. 6. The Alaska Native Claims Settlement Act is
9 further amended by adding a new section as follows:

10 "SEC. 7a. (a) If the Bristol Bay Native Corporation or
11 any Village Corporation located in the Bristol Bay region
12 adopts a resolution as provided in paragraph (2)(F) of subsec-
13 tion 7(h), such corporation may extend the restrictions on
14 alienation of Native common stock as provided in this
15 section.

16 "(b)(1) Within two years after the election under para-
17 graph (2)(F) of section 7(h) and, if the quorum requirement
18 specified in subsection (e) of this section is not satisfied, annu-
19 ally thereafter, the board of directors of such corporation
20 shall adopt, and submit to a vote of its stockholders, a resolu-
21 tion to amend its articles of incorporation to extend the re-
22 strictions on alienation of its Native common stock.

23 "(2) Such resolution shall provide for an extension of the
24 restrictions for a period of not less than twenty nor more than
25 fifty years.

1 “(3) If a resolution under paragraph (1) of this subsec-
2 tion is adopted, such corporation may, prior to the expiration
3 of the period of extension or any successor extension period,
4 further extend the restrictions under the provisions of this
5 section.

6 “(c)(1) If any vote conducted pursuant to subsection (b)
7 of this section is ineffective because of a continuing or repeat-
8 ed lack of quorum as provided in subsection (e) of this section
9 or if the holders of Native common stock defeat a resolution
10 to continue restrictions on alienation, the board of directors
11 shall adopt, and submit to the vote of the stockholders, a
12 resolution which establishes the date or describes the specific
13 event upon which the restrictions shall terminate.

14 “(2) If no such resolution is voted upon and approved,
15 the restrictions shall terminate one year from either the date
16 of the vote disapproving the resolution to extend such restric-
17 tions or the last date on which a lack of a quorum existed, as
18 the case may be, or on December 18, 1991, whichever date
19 later occurs.

20 “(3) On the date of termination of such restrictions, all
21 Native common stock of such corporation previously issued
22 shall be deemed canceled and shares of stock of the appropri-
23 ate class shall be issued to each stockholder, share for share,
24 subject only to such restrictions as may be provided by the
25 articles of incorporation, including any amendment thereto

1 adopted pursuant to section 7(h)(7), or in agreements be-
2 tween the corporation and individual stockholders.

3 “(d)(1) Notwithstanding any provision of Alaska law,
4 except those relating to stockholders’ rights of petition and to
5 proxy statements and solicitations which are not inconsistent
6 with the provisions of this section—

7 “(A) any amendment to the articles of incorpora-
8 tion of a corporation authorized by this section or sub-
9 sections 7(g) and 7(h) (4), (5), and (7) of this Act;

10 “(B) a transfer of assets made pursuant to section
11 7b;

12 “(C) a resolution described in subsection (c) of this
13 section; or

14 “(D) a resolution described in subsection (f)(2) of
15 this section;

16 shall be approved as provided in this subsection.

17 “(2) The board of directors shall adopt a resolution set-
18 ting forth the proposal and directing that it be submitted to a
19 vote at the annual, or a special, meeting of the stockholders.
20 One or more such amendments or resolutions may be submit-
21 ted to the stockholders and voted upon at one meeting.

22 “(3) A written or printed notice setting forth the propos-
23 al or a summary of the changes to be effected shall be given
24 to each stockholder of record entitled to vote not less than

1 fifty nor more than sixty days before the date of the meeting,
2 either personally or by mail.

3 “(e)(1) In order for a resolution to be approved under
4 this section, the proposal must be voted upon by at least 51
5 per centum of the outstanding shares of Native common stock
6 entitled to be voted and must receive the affirmative vote of
7 at least 50 per centum plus one of the shares voted.

8 “(2) Notwithstanding paragraph (1) of this subsection,
9 the stockholders may require a minimum vote of more than
10 51 per centum of the outstanding shares of Native common
11 stock entitled to be voted or an affirmative vote greater than
12 50 per centum of the shares voted, or both, to approve any
13 such proposal.

14 “(f)(1) If the result of a stockholder vote under this sec-
15 tion is the extension of restrictions against alienation or a
16 transfer of assets pursuant to section 7b, a stockholder who
17 voted against the extension or transfer may demand and re-
18 ceive from the corporation the fair market value of his or her
19 shares. Unless longer periods of time are authorized in the
20 bylaws of the corporation, the procedure established by
21 Alaska law for the exercise of the right of a dissenting stock-
22 holder to demand and receive payment for his or her shares
23 in certain cases shall be followed to the extent such right is
24 made available pursuant to this subsection.

1 “(2) The stockholders of the corporation may adopt a
2 resolution, concurrent with the vote authorized under subsec-
3 tion (a) of this section, which provides that, in the event dis-
4 senters’ rights are exercised—

5 “(A) the Native common stock shall be valued as
6 restricted stock, having the same restrictions for the
7 same period made applicable to the stock by the vote;
8 and/or

9 “(B) the value of the land or any interest therein
10 received by the corporation pursuant to this Act
11 which—

12 “(i) is committed by the corporation to
13 Native traditional or cultural uses; and/or

14 “(ii) is of speculative or unknown value on
15 the date such resolution is adopted;

16 shall be excluded by the stockholder, the corporation
17 and any court in the determination of the fair market
18 value of the shares of Native common stock to be pur-
19 chased from such stockholder by the corporation; and/
20 or

21 “(C) payments to each dissenting stockholder shall
22 be made by the corporation through the issuance to
23 such stockholder of a nonnegotiable note in the princi-
24 pal amount of the payment due, which note shall be
25 secured either by—

1 “(i) a payment bond issued by an insurance
2 company or financial institution;

3 “(ii) the deposit in escrow of securities or
4 property having a fair market value equal to at
5 least 125 per centum of the face amount of the
6 note; or

7 “(iii) a lien upon the real property interests
8 of the corporation valued at 125 per centum or
9 more of the face amount of the note, other than
10 lands or interests therein which are committed to
11 Native traditional or cultural uses and the per-
12 centage interest in its timber resources and sub-
13 surface estate that would result in the recognition
14 of ‘Gross Section 7(i) Revenues’ within the mean-
15 ing of, and pursuant to, article II, section 1(d) of
16 the 7(i) agreement cited in subsection (f)(2) of sec-
17 tion 7b of this Act.

18 “(3) Any note issued pursuant to this subsection shall
19 provide that—

20 “(A) interest shall be paid semi-annually, begin-
21 ning as of the date the corporation elected to extend
22 stock restrictions on Native common stock or transfer
23 assets pursuant to section 7b of this Act, at the rate
24 applicable on such date to obligations of the United
25 States having a maturity date of one year; and

1 “(B) the principal amount and any undistributed
2 interest shall be payable to the former stockholder or
3 his or her heirs or devisees—

4 “(i) at any time, at the option of the corpora-
5 tion; or

6 “(ii) if not so called, on December 18, 1991,
7 or, if the restrictions on Native common stock
8 otherwise would have expired on a later date, on
9 such date or five years after the date of election,
10 whichever comes first, or, if the transfer of assets
11 occurs after December 18, 1991, then five years
12 after the date of such transfer.”.

13 TRANSFER OF ASSETS: QUALIFIED TRANSFEREE ENTITY

14 SEC. 7. The Alaska Native Claims Settlement Act is
15 further amended by adding the following new section:

16 “SEC. 7b. (a) Any Native Corporation or the stockhold-
17 ers of a Native Corporation which has been dissolved invol-
18 untarily under applicable law is hereby authorized to convey
19 any or all of its assets, including the title to the surface or
20 subsurface of land, to a qualified transferee entity as provided
21 in this section. In cases where a Native Corporation has been
22 involuntarily dissolved under State law, a State court of ap-
23 propriate jurisdiction, upon petition of no less than twenty-
24 five of the former stockholders of such corporation, may order
25 the transfer of real property assets and such other assets re-
26 maining after satisfaction of outstanding debts upon an af-

1 affirmative vote of individuals who were shareholders in the
2 dissolved corporation on a resolution as provided in section
3 7(h)(6) or 7(c) without requiring that the resolution be adopt-
4 ed by the Board of Directors.

5 “(b) The conveyance of such assets shall be as provided
6 in a resolution, including a provision for the payment of con-
7 sideration or no consideration as desired, adopted by the
8 board of directors of such corporation and submitted to a vote
9 of its shareholders as provided in section 7(h)(6) or section 7a
10 of this Act, as the case may be.

11 “(c) An entity shall be qualified to accept a transfer of
12 assets conveyed pursuant to this section if it—

13 “(1) is organized pursuant to, or recognized by,
14 State or Federal law;

15 “(2) has a membership composed of persons
16 whose interest in the entity is nontransferable;

17 “(3) provides membership for every person who
18 holds Native common stock in the corporation making
19 the transfer of assets on the day before the date of
20 such transfer; and

21 “(4) except as provided in paragraph (3), accepts
22 as new members only Natives or descendants of
23 Natives.

24 “(d) Notwithstanding any provision of State or Federal
25 law, a qualified transferee entity is authorized to—

1 “(1) by a vote of its members;

2 “(A) limit its membership to Natives or de-
3 scendants of Natives; and

4 “(B) admit to membership non-Natives only
5 for the purpose of complying with paragraph (3)
6 of subsection (c) of this section;

7 “(2) distribute cash and other assets to its mem-
8 bers, except that such entity shall not convey fee title
9 to land or interests therein unless authorized or re-
10 quired by section 14(c) or 21(j) of this Act; and

11 “(3) exchange lands or interests therein pursuant
12 to the provisions of section 22(f) of this Act and section
13 1302(h) of the Alaska National Interest Lands Conser-
14 vation Act.

15 “(e) The provisions of subsections (d) and (e) of section
16 21 of this Act shall continue to apply to any lands or inter-
17 ests therein conveyed by a Native Corporation to a qualified
18 transferee entity pursuant to this section.

19 “(f)(1) Any revenues subject to distribution under sec-
20 tion 7(i) of this Act derived from assets conveyed pursuant to
21 this section shall remain subject to 7(i) to the same extent
22 such revenues would have been subject if the conveyance had
23 not occurred.

24 “(2) A Regional Corporation shall not convey assets
25 subject to section 7(i) to more than one qualified transferee

1 entity. Prior to receiving a conveyance of an asset subject to
2 section 7(i), a qualified transferee entity shall agree in
3 writing—

4 “(A) to be bound by the provisions of the agree-
5 ment dated June 29, 1982, among and between the
6 parties to Aleut Corporation et al. against Arctic Slope
7 Regional Corporation (Civ. Act. A75-53 D. Ak.); and

8 “(B) to waive its sovereign immunity, if any, with
9 respect to claims arising under section 7(i) or this
10 section.

11 “(3) The Regional Corporation or, in the case of its dis-
12 solution, another single entity designated by its stockholders
13 or the United States district court, as appropriate, shall be
14 responsible for administering the provisions of section 7(i) and
15 the June 29, 1982, agreement with respect to assets subject
16 to section 7(i) conveyed by such corporation pursuant to this
17 section.

18 “(4) After the conveyance of an asset subject to section
19 7(i) by a Regional Corporation, such asset shall be security
20 for the payment of such corporation or its successor entity of
21 all revenues which the corporation is obligated to distribute
22 to other Regional Corporations pursuant to section 7(i).

23 “(g)(1) If a resolution conveying assets is approved by a
24 stockholder vote pursuant to subsection (b) of this section,
25 any stockholder who voted against the resolution may

1 demand and receive payment from the corporation for all of
2 his or her shares, but only if, concurrent with such vote, the
3 stockholders of the Native Corporation adopt a resolution ex-
4 pressly providing for such right.

5 “(2) The procedure established by Alaska law for the
6 exercise of the right of a dissenting stockholder to demand
7 and receive payment for his or her shares in certain cases
8 shall be followed if such right is made available pursuant to
9 this subsection.

10 “(3) For the purpose of this section, a resolution estab-
11 lishing dissenters’ rights may provide that the Native
12 common stock shall be valued on the basis set forth in section
13 7a(f)(2) and that the form of payment to dissenting stockhold-
14 ers shall be as provided in section 7a(f)(3).”

15 DISCLAIMER: TRIBAL GOVERNMENT

16 SEC. 8. The Alaska Native Claims Settlement Act is
17 further amended by adding a new section as follows:

18 “SEC. 7c. No provision of the Alaska Native Claims
19 Settlement Act Amendments of 1986 shall be construed as
20 enlarging or diminishing or in any way affecting the scope of
21 governmental powers, if any, of an Alaska Native village
22 entity, including entities organized under the Act of June 18,
23 1934 (48 Stat. 987), as amended, or Traditional Councils.”

24 SEC. 9. The Alaska Native Claims Settlement Act is
25 further amended by adding a new section as follows:

1 “SEC. 7d. The Aleut Corporation, Cook Inlet Region,
2 Inc., and Koniag, Inc., and any Village Corporation within
3 the Aleut and Cook Inlet regions may, by a vote of its board
4 of directors within one year after the effective date of this
5 section, elect to comply with the provision of section 7a with
6 respect to a stockholder vote on the question of whether to
7 continue restrictions on alienation of Native common stock
8 imposed by paragraph (1) of section 7(h) beyond Decem-
9 ber 18, 1991.”.

10 VILLAGE AND URBAN CORPORATIONS: NATIVE GROUPS

11 SEC. 10. Subsection (c) of section 8 (43 U.S.C. 1607(c))
12 is amended to read as follows:

13 “(c)(1) The provisions of subsections (g), (h), and (o) of
14 section 7 and of section 7a of this Act relating to Regional
15 Corporations shall apply in all respects to Village Corpora-
16 tions, Urban Corporations and Native groups, except that—

17 “(A) audits need not be transmitted to the Com-
18 mittee on Interior and Insular Affairs of the House of
19 Representatives or to the Committee on Energy and
20 Natural Resources of the Senate; and

21 “(B) subject to the provisions of paragraph (2) of
22 this subsection and section 7a, restrictions on the alien-
23 ation of Native common stock of such corporations, in-
24 choate rights thereto, and any dividends paid or distri-
25 butions made with respect thereto shall continue after
26 December 18, 1991.”.

1 “(2) The restrictions on alienation of Native common
2 stock of Village Corporations, Urban Corporations and incor-
3 porated Native groups may be terminated or extended by the
4 adoption of an amendment to their articles of incorporation to
5 such effect pursuant to the provisions of paragraphs (2) and
6 (6) of subsection 7(h) or of section 7a, as the case may be,
7 except that—

8 “(A) with respect to action under section 7(h),
9 only one such vote may be held prior to December 18,
10 1991 and only once annually thereafter; and

11 “(B) with respect to action under section 7a,
12 votes shall be held as provided in subsection (b)(1) of
13 section 7a.”.

14 CONSTITUTIONALITY: UNITED STATES JURISDICTION

15 SEC. 11. Section 10 (43 U.S.C. 1609) is amended by
16 adding the following new subsection:

17 “(c)(1) The United States District Court for the District
18 of Alaska is vested with exclusive original jurisdiction over
19 any action challenging the constitutionality of any provision
20 of the Alaska Native Claims Settlement Act Amendments of
21 1986. Such action shall be heard and determined by a court
22 of three judges as provided in section 2284 of title 28, United
23 States Code, with a direct appeal from any final judgment to
24 the United States Supreme Court.

25 “(2) It being the express intention and direction of Con-
26 gress that in no circumstances shall enactment of this Act

1 result in any liability to the United States, the court shall not
2 enter a money judgment against the United States in fashion-
3 ing appropriate relief upon a determination that any of such
4 sections violates the Fifth Amendment to the United States
5 Constitution.”.

6 SUBSURFACE CONVEYANCE TO VILLAGE ENTITY

7 SEC. 12. Section 14 (43 U.S.C. 1613) is amended by
8 adding the following new subsection:

9 “(i)(1) A Regional Corporation may convey any subsur-
10 face estate owned by such corporation to a village entity
11 which acquired or currently owns the surface estate pursuant
12 to this Act.

13 “(2) Notwithstanding any conveyance pursuant to para-
14 graph (1) of this subsection, the Regional Corporation shall
15 continue to receive the thirty percent of the revenues from
16 any development of the subsurface estate it would have re-
17 tained had there been no such conveyance and the remaining
18 seventy percent of such revenues shall be distributed in ac-
19 cordance with section 7(i).

20 “(3) Any conveyance under this subsection shall be sub-
21 ject to the provisions of section 7b as if the village entity
22 were a qualified transferee entity. The document or docu-
23 ments effecting such conveyance shall be recorded by the Re-
24 gional Corporation, together with copies of section 7b and
25 this subsection, in the land records of the appropriate record-
26 ing district.

1 “(4) The village entity to which any subsurface estate is
2 conveyed pursuant to this subsection may not convey or oth-
3 erwise transfer all or any part of such subsurface estate to
4 any other entity without the express consent to the transfer
5 Regional Corporation.”.

6 REAL PROPERTY INTERESTS: IMMUNITIES

7 SEC. 13. Paragraph (1) of subsection 21(d) (43 U.S.C.
8 1620(d)(1)) is amended to read as follows:

9 “(1)(A) All land and interests therein conveyed pursuant
10 to this Act, to any Native individual, Native group, Village
11 or Regional Corporation, or a corporation established pursu-
12 ant to section 14(h)(3) of this Act shall be, so long as such
13 land and interests therein are not developed or leased to third
14 parties or are used solely for purposes of exploration, entitled
15 from the date of their conveyance to immunity from—

16 “(i) adverse possession and similar claims based
17 upon legal theories of estoppel;

18 “(ii) real property taxes by any governmental
19 entity;

20 “(iii) judgment resulting from any claim based
21 upon or arising under title 11 of the United States
22 Code relating to bankruptcy (or any successor statute),
23 other insolvency or moratorium laws, or other laws af-
24 fecting creditors’ rights generally;

25 “(iv) unless such immunity is waived by the cor-
26 poration in a valid and binding contract executed prior

1 to the commencement of such proceedings, judgment in
2 any action at law or equity to recover sums owed or
3 penalties incurred by any Native Corporation or Native
4 group or any officer, director, or stockholder of any
5 such corporation or group, and

6 “(v) involuntary distribution or conveyance related
7 to the involuntary dissolution of the Native
8 Corporation.

9 “(B) For the purposes of this paragraph, lands shall not
10 be considered to be developed solely as a result of construc-
11 tion, installation, or placement upon such land of any struc-
12 ture, fixture, device, or other improvement intended to
13 enable, assist, or otherwise further the subsistence or other
14 customary or traditional uses of such land.

15 “(C) Immunities provided for in this paragraph shall be
16 in addition to those immunities or other benefits to which
17 such lands or interests therein may be entitled under the
18 Alaska National Interest Lands Conservation Act, but shall
19 not apply to any judgment in any action at law or equity or
20 to any arbitration award arising out of any claim regarding
21 revenue sharing under section 7(i) of this Act.

22 “(D) Land to which this paragraph applies and lands
23 conveyed pursuant to section 7b of this Act shall be subject
24 to condemnation for public purposes in accordance with the
25 provisions of applicable State law.

1 “(E) Except as provided in section 14(c)(3), no trustee,
2 receiver or custodian vested under applicable Federal or
3 State law with any right, title or interest of any Native Cor-
4 poration or Native group may assign or lease to a third party
5 any land subject to this paragraph which has not theretofore
6 been developed or leased, or commence development or use
7 of the land other than for purposes of exploration, and such
8 trustee, receiver, or custodian may not convey any right,
9 title, or interest in land and interests therein protected under
10 this paragraph to any third party, except pursuant to a judg-
11 ment or arbitral award regarding revenue sharing under
12 section 7(i).”.

13 CONFORMING AMENDMENT: SECTION 21

14 SEC. 14. Subsection (f) of section 21 (43 U.S.C. 1620(f))
15 is amended by striking the phrase “Until January 1,
16 1992” and inserting, in lieu thereof, the phrase “Until such
17 time as the limitations upon alienation of Native common
18 stock have been removed pursuant to section 7(h)(2) or have
19 expired pursuant to section 7a of this Act”.

20 SEVERABILITY CLAUSE

21 SEC. 15. Section 27 (85 Stat. 688) is amended to read
22 as follows:

23 “SEC. 27. The provisions of this Act, as amended, are
24 severable and, if any provision of the Act is determined by a
25 court of competent jurisdiction to be invalid, such invalidity
26 shall not affect any other provision.”.

1 CORPORATIONS EXEMPT FROM SECURITIES LAWS

2 SEC. 16. Section 28 (43 U.S.C. 1625) is amended to
3 read as follows:

4 “SEC. 28. (a)(1) Any corporation organized pursuant to
5 this Act shall be exempt from the provisions of the Invest-
6 ment Company Act of 1940 (54 Stat. 789), the Securities
7 Act of 1933 (48 Stat. 74), and the Securities Exchange Act
8 of 1934 (48 Stat. 881), as amended, through the earlier of
9 the date after—

10 “(A) the date on which the corporation issues any
11 shares of stock which will not be issued solely to Na-
12 tives or descendants of Natives or to entities estab-
13 lished for the sole benefit of Natives or descendants
14 of Natives; or

15 “(B) the date on which the corporation removes
16 the limitations on alienation of Native common stock as
17 provided for in section 7(h)(2) or the date on which
18 such restrictions terminate under section 7a of this
19 Act.

20 “(2) Nothing in this section shall be construed to mean
21 that any such corporation shall or shall not, after such date,
22 be subject to the provisions of such Acts.

23 “(b)(1) Any such corporation which, but for this section,
24 would be subject to the provisions of the Securities Exchange
25 Act of 1934 shall transmit to its stockholders each year a

1 report containing substantially all the information required to
2 be included in an annual report to stockholders by a corpora-
3 tion which is subject to the provisions of such Act.

4 “(2) For the purposes of determining the applicability of
5 the registration requirements of the Securities Exchange Act
6 of 1934 after the date determined pursuant to subsection (a)
7 of this section, holders of Native common stock shall be ex-
8 cluded from the calculation of the number of shareholders of
9 record pursuant to section 12(g) of that Act.

10 “(c) The provisions of the Investment Company Act of
11 1940 shall not, in any event, apply to any corporation orga-
12 nized pursuant to this Act prior to January , 2001.”.

13 **FEDERAL PROGRAMS: MINORITY CORPORATION**

14 **SEC. 17.** Section 29 (43 U.S.C. 1626) is amended by
15 adding the following new subsection:

16 “(c) In determining the eligibility of any household or
17 individual Native or descendant of a Native to participate in
18 the Food Stamp program, receive assistance under the Social
19 Security Act of financial assistance or benefits available
20 under any other Federal or federally assisted program other-
21 wise available to the Native people of Alaska as citizens of
22 the United States and of the State of Alaska, any compensa-
23 tion, remuneration, revenue, stock, land, or other benefits re-
24 ceived by any individual, any household or any member of
25 such household under this Act, including land received from
26 such individual’s Native Corporation or Native group orga-

1 nized under this Act, shall be disregarded and shall not be
2 considered as a resource or otherwise utilized as a basis for
3 making such determination.

4 “(d) Until such time as less than 50 per centum of the
5 voting power of a Native Corporation is represented by
6 shares of outstanding Native common stock or any other se-
7 curities of such corporation held by Natives or descendants of
8 Natives entitled to vote, such Native Corporation for all pur-
9 poses of Federal law shall be considered a corporation owned
10 and controlled by Alaska Natives.”.

11 CONFORMING AMENDMENT: SECTION 30

12 SEC. 18. Subsection (b) of section 30 (43 U.S.C.
13 1627(b)) is amended by striking the phrase "prior to Decem-
14 ber 19, 1991" and inserting, in lieu thereof, the phrase
15 "while the Native common stock of all corporations subject
16 to merger or consolidation remain subject to restraints on
17 alienation".

Passed the House of Representatives March 31, 1987.

Attest: DONALD K. ANDERSON,
Clerk.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE
STATE OF ALASKA

Senator STEVENS. Thank you, Senator, and Mr. Chairman, and I thank my good friend from Nevada, too, for deferring to me. I am involved in another hearing in the building, and I am pleased to see that you are holding this hearing on S. 1145, which we have introduced this past month dealing with the 1991 issues. The bill as we introduced last year, I am sure everyone knows, did not finally become law. I am told that the Alaska Federation of Natives has taken a position that it has three major objections to our bill, S. 1145, the requirement that the regional corporation shareholders vote to extend restrictions on the alienability of regional corporation stock, mandatory dissenters' rights for regional corporation shareholders who successfully vote against an extension of alienability restrictions, and the sovereignty disclaimer.

I believe and hope that we can work out any disagreement that exists over these corporate provisions of S. 1145. But I believe everyone should remember that the Department of the Interior has announced that it opposes the so-called opt out approach for regional corporations under which alienability restrictions are automatically extended and dissenters' rights are optional. In reworking this bill, S. 1145's corporate provisions, I do not believe we can afford to sacrifice the support of the Administration for the 1991 process.

As far as the sovereignty disclaimer is concerned, our options really are much more limited. So long as the qualified transferee entity provision currently in S. 1145 is retained, a comprehensive disclaimer that addresses the issue of a shift in land ownership from a native corporation to a tribal entity really is necessary. That is the only way we can meet our commitment to keep the 1991 bill out of the native sovereignty controversy at home in Alaska.

Mr. Chairman, I find now that I am the only member of the 1971 conference that wrote the Alaska Native Land Claims Settlement Act that serves in the Senate, and I am committed to ensuring the continued success of the land settlement we worked so hard to achieve at that time. It is my hope that the Senate will act expeditiously at your request on S. 1145 so that the problems of 1991 can be resolved in a timely fashion.

Most people do not understand the problems of 1991. They involve not only getting a bill passed to meet the request of those people who find that the original Act was too restrictive, but they also involve getting that bill passed in a timely fashion which means in sufficient time to allow those who disagree with what the majority of the Alaska Native people seek to have their day in court.

Only if we enact this bill in a timely fashion in this Congress will those who disagree with this approach have a chance to go to court and have their day in court to challenge what the Congress and the majority of the Alaska Federation of Natives agree to. I believe that that is the only fair way to proceed, is to get a bill passed by the Congress, approved by the President in time for the litigation

which I believe will of necessity follow the enactment of any change in the 1971 legislation on these issues.

Now, unfortunately, as I said, I have to go back and be at this other hearing. I do ask that if anything comes up that you wish to have me involved in, that you send word to me. I will do my best to come back.

Thank you again, Mr. Chairman. I appreciate it.

Senator MURKOWSKI. Thank you very much, Ted. I think it is interesting to have you point out the fact that in this short period of time you are the only one left who had something to do with putting this together.

Senator STEVENS. Sixteen years becomes shorter and shorter.

Senator MURKOWSKI. Okay. Have a good day.

Senator Hecht.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Thank you, Mr. Chairman. I just wanted to come here this morning, although my state is not affected, I have such high esteem for you and Senator Stevens, and I just like to be up on the issues facing your state. You have always been very supportive of my state. Thank you.

Senator MURKOWSKI. Thank you very much, Senator Hecht. We both have been given some attention lately by the Energy Committee as they search for waste disposal, and our state has indicated that we think it ought to be some place else, and I think your state has indicated that as well, so we have that as well as may other things in common.

Senator HECHT. Well, I think we are both taking a rational approach, and we have to face the realities of life, and nuclear waste is with us. We have to make it safe. I put in some bills last week and the week before to give us some cooling time like we observed in Europe. Also, we have to face the prospect of recycling, which is very, very effective. And no matter where it might be, it has to be very, very safe, and on that basis I think the Energy Committee is working together.

Senator MURKOWSKI. We have picked up a little trivia this morning. We will proceed on with the agenda, because we have a list of witnesses that we want to get through this morning, and we will proceed first of all with J. Stephen Britt, Assistant to the Secretary for Legislative and Congressional Affairs of the U.S. Department of the Interior, Washington, D.C., and do you have any associate with you, or will you be carrying the ball by yourself?

Mr. BRITT. I am all alone, Mr. Chairman.

Senator MURKOWSKI. Well, we have a telephone around the corner if you want to contact the Secretary. Before we get into your formal statement, I have found in going through these hearings that there often are different versions of interpretations on specifics, so I am going to move out in the venturesome area and indicate the interpretation the Chair has for the opt out, opt in, because I think it may come up in the testimony we are about to hear.

I take no pride of authorship but I am very close to one of the authors on my left, Tom Roberts, who is my legislative director, so if there are those of you who differ with the interpretation which I am about to give you, please send a note up and we will meet out in the hall, or whatever is appropriate. Opt out equals discretionary vote, discretionary dissenters' rights. Congress automatically extends stock restrictions. Corporations need not hold vote to opt out of restrictions, and corporations need not pay off dissenters, that is, shareholders, who voted to opt out. Tom, does that sound like what you meant? So far we are all right.

Opt in, mandatory vote—mandatory dissenters' rights. Stock restrictions are allowed to terminate in 1991. Corporations are required to vote to opt in, to restrictions, corporations must pay off dissenters if stock restrictions are extended. I might ask the witness if he agrees with that interpretation as far as the intent of the Chair is concerned, on using those terms.

Mr. BRITT. That is fine, Mr. Chairman.

Senator MURKOWSKI. Please proceed, Mr. Britt.

STATEMENT OF J. STEPHEN BRITT, ASSISTANT TO THE SECRETARY FOR LEGISLATIVE AND CONGRESSIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. BRITT. Thank you, Mr. Chairman. I am pleased to be here to testify on behalf of the Department of the Interior on H.R. 278 and S. 1145, amendments to the Alaska Native Claims Settlement Act. I have a written statement for the record, Mr. Chairman, which I would like to briefly summarize.

Senator MURKOWSKI. It will be entered in the record.

Mr. BRITT. Mr. Chairman, it was almost exactly one year ago that I appeared before you in Alaska on this very subject. As we discussed at those hearings, the Department could not support the major changes to ANCSA reflected in last year's bills but would seek alternatives that would not do such violence to individual shareholder rights.

As you know, despite serious and prolonged efforts on both sides last year, we were unable to achieve consensus on these issues. We were sympathetic to the concern that allowing native stock restrictions to expire in 1991 could lead to widespread loss of native lands and thus native culture.

We therefore made compromises that we did not like at the time in a sincere effort to get this issue behind us. We were therefore a little shocked when that hard-fought compromise was rejected out of hand by the Alaska Native community as nonresponsive to their needs. In the intervening time, Mr. Chairman, the Department has reflected on those efforts and the nature of those amendments. We have come to understand that our disappointment was only partially the result of the rejection of our compromise. It was even more that we had nearly acquiesced in a proposal that went far beyond our own principles about what we believe is right on this issue, right not just for some Alaska Natives between now and 1991, but right for all Alaskans in the long term.

So, I sit before you one year later with a great sense of frustration that we, all of us, have not been able to solve this important

issue, but sure, nonetheless, as reiterated to me by the Secretary as recently as this past Friday, that the Department will not again stray so far from our principal goal, the preservation of individual shareholder rights. Unlike last year's effort, these rights must be real and tangible, not just apparent.

With that in mind, Mr. Chairman, the Department continues to strongly oppose each of the bills before us as constituting too great an infringement of such rights. We recognize and appreciate, of course, that the Senate bill is an improvement over the House bill in several respects. However, we believe it simply does not go far enough. For example, one, under S. 1145, corporations do have an alternative to the dilution of shareholder stock through the issuance of shares to natives born after 1971. This is through the authorization of inter vivos conveyances of existing settlement stock to new natives. Still, the dilution option is tremendously unfair to shareholders with few or no children, and no dissenters' rights apply to such actions.

Two, Mr. Chairman, as to regional corporations, under your bill at least there must be a vote to extend stock restrictions beyond 1991. However, the automatic extension as a matter of law still applies to villages. Also, the dissenters' rights that apply to such votes are almost illusory. For example, the valuation of the dissenters' stock can exclude most of the corporation's real assets and is subject to numerous other restrictions as to how and when any value is ultimately received.

Moreover, the payment of dissenters' rights is purely discretionary with the corporation in virtually all circumstances except the very first extension by regional corporations. We must oppose these curtailments of shareholder value especially since dissenters' rights may be the only means for some natives to realize any return for the relinquishment of their land claims 16 years ago.

And three, finally, Mr. Chairman, on the subject of disclaimers, closely related to the issue of sovereignty, the Senate version is far more effective than that in the House version in preserving the neutrality of these amendments. However, we still cannot be assured that it will be given literal effect by the courts, especially with the QTE section in the bill.

We believe it will be difficult to square the provisions of these bills, which clearly retrench from the corporate structure of ANCSA, with the neutrality attempted by these disclaimers. This is particularly true with the designation of both ANCSA and these amendments as Indian law. That change, together with the failure to act on the sovereignty issue expressly, may give a court just enough leeway to rule on this question either way.

Mr. Chairman, we have other concerns and disagreements with these bills, but suffice it to say that our opposition is not so much a result of any particular provision as it is a matter of principle regarding what we believe is right. And that requires, in our view, a more limited solution which better protects the interests of current shareholders, many of which are already non-native. We regret this position, for we appreciate your efforts to reach a consensus in this matter. We have devoted many hours to finding a fair solution, and we pledge our continued efforts to do the same. However, we believe that that will only occur when we focus on the action-forcing

event, the 1991 ending of restrictions, and seek a solution that is as fair to those who welcome that change as to those who oppose it.

Thank you again, Mr. Chairman, for this opportunity to present the Department's views, and I will attempt to answer any questions you may have.

[The prepared statement of Mr. Britt follows:]

STATEMENT OF STEVE BRITT, ASSISTANT TO THE SECRETARY OF THE INTERIOR FOR CONGRESSIONAL AND LEGISLATIVE AFFAIRS, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ON H.R. 278 AND S. 1145, AMENDING THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

May 19, 1987

Mr. Chairman and members of the Subcommittee, I am pleased to be here with you today to give you the views of the Department of the Interior on H.R. 278, as passed by the House of Representatives, and S. 1145, the "Alaska Native Claims Settlement Act Amendments of 1987." This legislation is intended in part to resolve what are known as the "1991" issues -- those issues related to expiration in the year 1991 of the restrictions on the alienation of Native Corporation stock in Alaska.

As you well know, Mr. Chairman, the Alaska Native Claims Settlement Act of 1971 (ANCSA) is a unique statute. It provided a complex settlement of long-standing individual and group Native land claims in Alaska by use of an unusual corporation system, including individual stock ownership by Alaska Natives. Under the terms of ANCSA, these shares in Native corporations remain inalienable, except for a few special situations involving court decrees, until the end of 1991. As we move closer to this deadline, some have expressed concern that unrestricted sale of Native stock could result in widespread loss of Native lands and rights through loss of ownership and control of these corporations. Underlying this fear is the apparent belief that 20 years is not long enough to secure a solid future for Alaska Natives. As a result, these bills were introduced to provide for, among other things, continuation of the Native stock alienation restriction beyond 1991.

While we are sympathetic to the concerns that have given rise to these bills, and while we certainly support the goal of meaningful opportunity for continued Native control of Alaska Native lands, we cannot support either bill. Both go far

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beyond what is necessary to achieve full and satisfactory participation by Alaska Natives in the settlement process and the corporate system. We disagree not only with the automatic extension of the restraints on alienation of Native corporate stock; we also disagree with many of the other proposed changes to ANCSA unrelated to the 1991 deadline. As to H.R. 278, the Administration has strongly opposed that measure, as reflected in the attached letter provided to the House of Representatives during recent hearings on that bill. While S. 1145 is better in some respects, the differences are not sufficient to overcome our strong opposition to its changes to ANCSA.

Both bills provide for some automatic extension of stock inalienability -- H.R. 278 automatically extends the deadline for all Native shareholders, and S. 1145 provides automatic extension for villages, with the option to block stock sales by vote in the regional corporations. We note that under the Senate bill, a vote to extend the stock restrictions may become effective with the approval of as little as 26% of the total voting power of the corporation, which is already greatly restricted. Both this voting mechanism and the automatic extension provisions, coupled with the speculative and burdensome nature of any right for dissenting shareholders to claim compensation for their loss, create an unfair abridgement of individual Native shareholder rights and expectations.

Other major issues common to both House and Senate bills also concern us:

1. Differentiating between stock held by Natives and non-Natives;
2. Issuing new stock without consideration;
3. Allowing the formation of new groups under ANCSA, including the so-called "qualified transferee entities," with new privileges and immunities; and
4. Extending the scope of ANCSA as Indian law.

Mr. Chairman, as you know, we worked with you and others during the 99th Congress to devise a compromise on these issues. We intensively reviewed the then-proposed amendments. We consulted with the State of Alaska, Native groups and other interested organizations. We searched through various policy options to come up with alternative proposals. We even conceded on certain key points, with the understanding that these concessions could only be offered in the context of an overall acceptable package.

We did all this because our concerns about legislation such as H.R. 278 and S. 1145 are very real, yet we are aware of the deep conviction of the proponents that ANCSA amendments are essential to the well-being of Alaska Natives. While we have tried to understand the fear of an unknown future that sparks this legislation, we also know that these bills will erode seriously the original Act. Enactment of this legislation would be a clear and unmistakable retrenchment from the corporate structure that formed the core of the Native claims settlement in the original ANCSA. These changes would lock the Natives into their current power structures, either in the current corporate format or worse, allow these legal entities to become mere shells or paper organizations, with all significant assets of the particular corporation transferred to the control of a tribal organization. These changes would remove the very flexibility that we believe is the only viable route to the future success of Alaska Natives. They could also result in significant future financial exposure by the Federal Government.

The original ANCSA recognized the importance of preserving Native culture, and we have always supported this goal. But ANCSA was more than a piece of social legislation -- it was a settlement of land claims, at least some of which had the potential of great economic value, and it was a legislative attempt to promote

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Native economic self-sufficiency. The Natives who received stock in the corporations had the right to assume that, if the corporations were economically successful, they someday might be able to realize economic benefits from that stock. To strip away this expectation without some meaningful return of value for their settlement is wrong.

Mr. Chairman, other issues related to sovereignty over lands in Alaska and the declaration that ANCSA is to be considered Indian law also trouble us greatly. We continue to believe that we must preserve, insofar as possible, the intent and provisions of the original Act. This was an innovative settlement, and fear of the future should not push us down the slippery slope of converting the Alaska Native community into a reservation-type system, and the associated dependency status such a move would bring. Although we will work with you to perfect the original Act where necessary to achieve our mutual goals, we cannot support an approach which undoes the progress that has been made through this settlement. We also cannot support bills such as these which broadly and unnecessarily infringe upon individual rights and expectations in Alaska.

Let me address some of our specific concerns with H.R. 278 and S. 1145:

Section 2 of both bills contains findings and declarations of policy that we find inaccurate, misleading, and contrary to both the spirit and letter of the 1971 Act. We particularly object to citing a need to extend stock restrictions and declaring ANCSA to be Indian legislation under the Constitution. The thrust of these findings could place the Federal Government into an unwanted paternalistic role with regard to Alaska Natives, and open the door to a continuing, inextricable dependency relationship.

Section 3 of both bills creates a variety of new definitions for corporate stock and eligible stockholders. The purpose seems to be to draw more narrowly the category of those eligible to participate in the corporation and to create a maze of restricted stock.

Section 4 of both bills authorizes issuance of new stock for new Natives, and additional shares and classes with certain restrictions. This dilutes the value of existing corporate shares and creates racially-defined classes of ownership. Neither bill would compensate those whose stock value would be diminished by the dilution.

Sections 5 and 6 of the Senate bill, S. 1145, distinguish between a form of original issue stock called "Settlement Common Stock" and other "replacement stock," and list a variety of provisions designed to ensure that settlement stock remains forever in Native hands, or loses its voting rights in the corporation. This is far too restrictive to ensure a true market value for the corporate stock. It also creates a new class system in these corporations based on the type of stock held.

These issues cannot be ignored by merely calling this measure "Indian legislation." An increasingly significant amount of stock already is held legally by non-Natives through inheritance or court decree of separation, divorce, or child support. This level approaches 30% in some regions. Moreover, it is erroneous to think that there is complete unity of interest even among Natives. We know that in some corporations more than half of the shareholders live outside their region, calling into question the basic premise of these bills.

Moreover, we note that just yesterday, the U. S. Supreme Court handed down an opinion in the case of Hodel v. Irving that found a certain provision of a lands statute dealing with Indians unconstitutional. The question presented related to the "taking" of property without just compensation from the heirs of a decedent when such property escheated to the tribe under the law. The Court said, in part, that "...the right to pass on valuable property to one's heirs is itself a valuable right," and "In one form or another, the right to pass on property - to one's family in particular - has been part of the Anglo-American legal system since feudal times." Because these amendments may abrogate a similar right, we believe these are questions to be addressed in any proposed ANCSA amendments.

Sections 5 and 6 of the House bill, H.R. 278, automatically extend the restriction on alienation of what this bill calls "Native common stock" for all Native corporations except Bristol Bay. There is no automatic payment of dissenters' rights unless the corporation votes to provide. S. 1145 splits the alienability restrictions -- section 7 says that the restrictions continue indefinitely, unless terminated by vote, as to village, urban and group corporations (the latter two categories have been newly defined and created). As to regional corporations, section 10 says that restrictions on alienation will terminate unless extended by vote.

We cannot support extensions of stock restrictions which ignore the needs and rights of individual stockholders. These sections also limit valuation of stock and provide for denial of voting rights to non-Natives, both of which trouble us greatly. We believe the principal effect of these provisions will be to perpetuate current management in the corporations. These provisions, in particular, cause us some of our most substantial concerns and raise real questions of fairness and the fulfillment of the Federal Government's commitments.

First, the restrictions on alienation effectively would convert the Alaska Native corporations to membership associations. This is a fundamental change to the basic framework of ANCSA. We do not believe it is a prudent change.

Second, it would have an adverse effect on property interests and rights of stockholders under current law. ANCSA constituted a settlement of disputed claims, with each Alaska Native receiving certain rights in return for the release of both individual and group claims. The right to sell their stock after 1991 is one of these rights. To deprive Alaska Natives of this right to sell seems unfair and a violation of the Government's prior commitments. The unacceptable nature of this deprivation is not ameliorated by the fact that, by a majority vote of shareholders, the corporation may elect to "opt out" of the Federally-imposed prohibition against alienation of shares in the House bill, or the vote that could be taken by the regional corporations under the Senate bill.

Third, extending the restraints on alienation is inconsistent with the express, ultimate goal of self-determination for Alaska Natives. If individual Natives believe that they would be better off by selling their stock, the Federal Government should not make it possible for a minority of the shareholders to lose their fundamental right to decide for themselves whether or not to sell or to encumber their shares. If a family wants to liquidate its shares to finance the college education of its children, or if a young person wants to pledge his or her shares to obtain a loan to establish a small business, they should be able to do so.

Moreover, we must object to the permissive, rather than mandatory, nature of the provisions pertaining to the corporation's obligation to pay fair value for the stock

of dissenting shareholders. We oppose the notion that a dissenting shareholder's stock is to be valued as "restricted stock," given that the restriction was not consensual in origin and that many corporate assets do not count in valuing the stock.

Further, the voting standards for votes to remove these restrictions are far too limited. Only the board of directors or a shareholder petition under very limited circumstances can set up a vote. The standard for approval to remove the restrictions in the House bill is higher than other resolutions; under S. 1145, the extension of restrictions may occur by a vote of only 26% of the voting power of the corporation. Under such a system, those in power can practically assure their continued control of the corporation. We find particularly troublesome the authorization in S. 1145 for the directors to exclude information about the value of the corporation's land and other assets in preparation for these kinds of votes.

As for the stockholders who dissent with regard to these restraints, both bills provide only a cursory acknowledgement of their rights. Section 5 of H.R. 278 has no automatic payment of the dissenters' loss unless the corporation votes to pay. S. 1145 provides for two situations. Dissenters in village corporations may request payment from the corporation, with certain procedural and valuation limitations. Payment is by negotiable note. Dissenters in regional corporations get their rights only at the first extension of the alienability restrictions. After that, they're locked in. The corporation's board of directors can also decide simply to issue alienable stock for the original stock. The corporation can insist on its own right to repurchase this stock before any other transfer, and the stock would not have voting rights if transferred to non-Natives.

These are paper payments that do not constitute meaningful dissenters' rights. Furthermore, the restrictions on how the dissenters' stock may be valued would unfairly limit the shareholder's true interest. Most potentially valuable assets could be excluded. Even worse, the time allotted for dissenters to assert their rights is too short for meaningful participation. This is particularly troublesome in light of the significant lack of information provided to shareholders as to the value of the corporation's assets.

Because we are sensitive to the needs articulated by Native leaders that led to these measures, Mr. Chairman, we tried, during the last Congress, to come up with a concept that could achieve their stated aims consistent with the original Act. Alaska corporate law already provides for voting trusts, a long-recognized mechanism for assuring corporate control. We offered to support legislation which would make voting trusts a more useful device for minimizing or eliminating the risk that non-Natives might acquire control of the corporations.

If that were not considered sufficient protection for the corporations, the goal of continued Native control could be achieved by legislation to permit the establishment of voluntary stock ownership trusts. If a majority of Native shareholders would be willing to vote under the Senate bill in favor of restricting alienation, the same majority should be willing to place their shares in trust for some mutually-agreed period. Doing so certainly removes the Native corporation as a "target" for those persons or corporations who would wrest control from the Natives. Indeed, it is likely that the placement of a substantial, but non-majority, block of stock in a trust would make the Native corporation a less likely "target" for non-Native takeover. We believe that one or a combination of these approaches would meet the objectives stated by the proponents of the pending

legislation and, at the same time, avoid the serious problems we see in the legislation before you today.

Section 7 of H.R. 278 and section 12 of S. 1145 provide for the tax-free conveyance of corporate assets to so-called "qualified transferee entities" (QTEs). These are essentially shell transactions, designed to encourage the creation of tribal communities with power and control over the land and other assets. QTEs have nontransferable, limited membership and essentially replace the corporate structure with one that could more closely resemble a tribe or village structure. This essentially makes a sham of the corporate structure and pulls the Alaska Natives even closer to the reservation-type of system found in other states. It could also set the stage for the assertion of claims of Native sovereignty over certain lands in Alaska, which would contravene the intent of ANCSA as expressed in section 2(b) of the original Act.

Section 8 of H.R. 278 and section 21 of S. 1145 attempt to circumvent part of this problem with a sovereignty disclaimer, avowing that Native sovereignty or governmental power is not the intent of these amendments. While the Senate version appears broader, we are not confident that this disclaimer would be given literal effect by the courts in light of the other provisions of these bills, all of which point to exclusive Native control of land and assets. This is particularly true when coupled with the Indian Law provision in section 2. Moreover, since the disclaimers apply only to ANCSA, they do nothing to prevent Native communities which acquire corporate lands pursuant to the QTE provisions from attempting to assert sovereignty under some theory unrelated to ANCSA.

Section 13 of both bills undercuts the existing Alaska Land Bank. Both authorize land transfers with new and automatic tax immunities that will defeat certain conservation goals by removing incentives to participate in the Alaska Land Bank Program. This eliminates the requirement that Native landowners manage their land compatible with the adjoining Federal estate.

Finally, section 17 of both bills excludes certain ANCSA benefits from consideration in qualifying Natives for Federal benefit programs. It has been suggested that, if Native corporation stock becomes freely tradeable by 1991, a great many of the shareholders really will not benefit from such sales of shares as they might make because they will lose, or at least suffer from, sharply reduced Federal or State welfare payments. This is because many welfare laws have a "means test," and, if stock can be sold, the value of the stock will be regarded as an asset for means test purposes, with the result that the Native might not receive the welfare benefits he would have received if his stock had been subjected to restraints against alienation.

We have no objection to a provision to simply provide that, whether or not Native stock is freely tradeable, the value of the stock in the hands of its original owner (or in the hands of his or her relative who acquired the stock by gift or inheritance) and the proceeds from the sale thereof shall not be regarded as an asset of the shareholder for the purposes of any means test under Federal or State welfare laws. However, we object to extending the reach of any such provision to include dividends or other income received by the shareholder in respect of stock he continues to own. We believe that there properly is a distinction between preserving the asset value of the shares the shareholder received under the settlement Act and the dividend income which he receives.

The cumulative effect of all of these provisions, Mr. Chairman, leads us to our strong opposition of this legislation.

While we are willing to continue our efforts to reach a satisfactory set of ANCSA amendments, we can only agree to changes which better protect the legitimate rights and expectations of individual shareholders.

That concludes my prepared remarks on this issue. I would be pleased to answer any questions you may have.



THE SECRETARY OF THE INTERIOR
WASHINGTON

MAR 4 1987

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We understand you have scheduled a hearing for Wednesday, March 4, 1987, on H.R. 278, a bill "To amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes." Although we have not yet been asked to provide a formal report on this bill, due to our substantial interest and continuing involvement in this matter we wish to provide the Committee with our views. We ask that this letter be made a part of the official record.

We strongly oppose enactment of this legislation in its present form.

H.R. 278 is identical to legislation which passed the House of Representatives in the 99th Congress. It would, as a matter of Federal law, mandate the automatic and indefinite extension of restrictions on the alienation of Native Corporation stock beyond the current statutory expiration date of 1991. The bill would create new classes of property entitled to special treatment; lead to the creation of new, permanent racial institutions and distinctions by, among other things, differentiating between stock held by Natives and non-Natives, by taking away the rights of non-Natives to inherit stock through State laws of intestacy, and by depriving non-Natives of the right to vote their stock in certain circumstances; and allow the formation of new legal entities with special privileges and immunities, raising a serious question of sovereignty over certain lands in Alaska.

We believe these changes are fundamentally unfair to current Native and non-Native shareholders whose rights and expectations have been undisturbed for fifteen years. In some cases, these amendments raise serious legal and policy questions. This bill also undoubtedly would result in substantial litigation, involve the risk of the Federal government's financial exposure, and undermine the existing Native corporate structure in Alaska, the heart of the original Act.

As you may know, we worked with the Senate, the Alaska Federation of Natives (AFN), and other Alaska interests in the 99th Congress to modify the predecessor to this bill to reflect our concerns. At that time, we reluctantly agreed to a

tentative compromise on this proposal, subject to its acceptance by AFN, which involved major changes not reflected in H.R. 278. This compromise was rejected by AFN at its convention by nearly two to one. Therefore, we are no longer in a position to accept even that version of amendments to the original Act.

We would be pleased to work with the Committee and other interested parties to accommodate our concerns in order to resolve this important Alaskan issue. However, we are unable to support any bill which does not protect vital Native, non-Native, and Federal interests, particularly the rights and/or federally-created expectations of individual Natives and non-Natives. Unfortunately, H.R. 278 as presently drafted does not meet this requirement.

Thank you for the opportunity to present our views to the Committee. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in dark ink, reading "Donald Paul Hodel". The signature is written in a cursive style with a large, stylized "D" and "H".

DONALD PAUL HODEL

Senator MURKOWSKI. Thank you very much, Mr. Britt. I might add that your statement is quite extensive. Do you have extra copies with you?

Mr. BRITT. I have a few extra copies, and we can have some brought up.

Senator MURKOWSKI. Alright. I would ask that the staff make sure that we have enough available copies, and if interested parties in the audience would like them, why, please get in contact with any of the staff members and we will make sure that——

Mr. BRITT. We will see if we can get some up here before the hearing ends.

Senator MURKOWSKI [continuing]. They are made available, because I think it is very important that those that are interested have the opportunity to study in some detail the Department of Interior statement.

Mr. Britt, the Department has changed its position on the 1991 amendments since the last session. An example, you will recall the opt in, opt out standpoint of the villages previously last year you had conceded to allow the villages to take an opt out status, and now you are objecting to that, and I think your position is that the Department of Interior feels that both the regionals and villages should now require an opt in. Can you explain that difference and any other differences in the changed position of Interior?

Mr. BRITT. On that point you are essentially correct, Mr. Chairman. I think that as I tried to at least imply, we looked at the package of amendments last year that we had spent a long time of long negotiations involved in. I think the Secretary felt that he did agree to that change in the context of the entire package, which we felt had some recognition of our concerns; for instance, with the inclusion of a mechanism for the ownership trust, which was a voluntary mechanism that is consensual in nature and avoids any need for dissenters' rights at all. Also, the fact that you had an entire voting mechanism over the entire package helped imbue some sense of another democratic process on top of that.

I think my only answer as to that particular point is, that in the whole context of that package and the spirit of negotiation that we had been involved in during those many months, that we did agree to some concessions that, on reflection, I think the Secretary and the Department feel are just not the right way to go overall. That is, there are a lot of different shareholders in many different circumstances, and we think that it is important that there be a vote taken with mandatory dissenters' rights for any such fundamental change in corporations such as extensions of alienation restrictions.

Senator MURKOWSKI. Your emphasis is on individual rights of the Natives to have a choice in the matter. That is what all this opt in, opt out is about—basically expressing themselves through a vote, and then a determination if they want to opt out as an alternative available to them.

Mr. BRITT. Meaning the dissenters' rights?

Senator MURKOWSKI. That's correct.

Mr. BRITT [continuing]. In case they do not want to go along with the restrictions? We think that is extremely important, Mr. Chairman.

Senator MURKOWSKI. What do you do with a corporation that has values that perhaps are in a stage of development as opposed to a determinable monetary amount that the corporation may have in cash, vis-a-vis what it may have underground or in timber, and assuming somebody wants to terminate their relationship with the corporation, sell their stock, cash out, how would the corporations meet that requirement? I think it is fair that Interior has to look at the difficulties associated with that, and come up with an alternative that is workable.

Mr. BRITT. Mr. Chairman, we have heard those concerns and we are sympathetic to those concerns—Corporations that are not cash rich. Although, you know, we are told by the native community that there is virtually 99 percent agreement that restrictions should be extended and, in that case, there would not be very many dissenters. We do not know that there would be a problem in that sense, but even assuming theoretically they could exist, I cannot tell you what the final solution has to be, but we think it must give better recognition to the individual shareholders' interest. That, again, from their standpoint reflects their settlement years ago. If we allow the corporation not to have any kind of dissenters' right mechanism that is meaningful in the sense of getting real value in the natives' hands, and create a fairly well defined system, we think we stand the risk of having deprived those individual shareholders of their land settlements. I think this is a problem or an issue that is extremely complex, and you have to look at it in the context of the whole arrangement.

We think both bills really go too far. It is too uncertain that dissenters' rights will apply. When they do apply, much of the value can be excluded, on top of valuing their shares as restricted stock, which is the very objection the dissenter is dissenting to. All that together just, we think, goes a little too far.

Senator MURKOWSKI. In the testimony at other hearings, spokesmen for the regional corporations have indicated a grave concern with the extent of the liability that might be there, and as you pointed out, it is pretty hard to define that in advance, but it is there.

Mr. BRITT. It is not only there, it is heightened, Mr. Chairman, as a result of the Supreme Court decision yesterday in the *Hodel v. Irving* case, a case that we heard a lot about during our negotiations, against the Department's concerns about liability on these grounds—it is an Eighth Circuit case, and the government was trying to preserve the constitutionality of the Land Consolidation Act. The Supreme Court unanimously decided that there was a Federal taking by the elimination of the rights for Indians to devise their land to whoever they would want to give it to.

That taking away of the right to will or by intestacy devise land to their heirs was overturned. I think our concerns are even more heightened today than they were last week on this very subject. It is not one we take lightly. We think the distinction of having a vote to extend those restrictions as opposed to the Federal Government doing it automatically by law, therefore, is a very important distinction, and on that question alone we are concerned.

Senator MURKOWSKI. The application of the current court case, is it likely to be appealed?

Mr. BRITT. It is a Supreme Court decision.

Senator MURKOWSKI. It is a Supreme Court decision, so it stands. The effect that that would have on, let us take the dissenters rights' opt out alternative, would be what, in your opinion?

Mr. BRITT. Well, Mr. Chairman, we are still analyzing the decision. You know, in "taking" cases, the Court does an entire weighing of all the circumstances. We think in this case, extension of restrictions, the entire mechanisms by which that occurred—whether votes have occurred, whether there were meaningful ways for those that disagree with that vote to have ways to receive some return on their shares—are all important considerations, and the actual ways that that would occur are very important. So in this case, as applied to this issue, the importance of a vote in our opinion is of heightened concern, as opposed to automatic extensions. The importance of meaningful dissenters' rights are heightened as an important concern.

Senator MURKOWSKI. Do you see this as an obligation of the Department of Interior to absolve itself from liability and litigation from minority shareholders' suit? On the one hand Congress has the authority to change the law, which would insulate the Department of Interior. On the other that there is a constitutional provision to be concerned with here, and that would, of course, potentially override the law if indeed there was a violation of the Constitution. My question is, are you implying that this might occur after examining the facts associated with the legislation as proposed with the opt out and the realization that the Supreme Court has come down with a ruling?

Mr. BRITT. It is an issue that we are very concerned about. Depending on how the actual opt-out arrangements work, we think it is unclear what the effect could be, and certainly we feel it is in our interest to bring those considerations before you and help protect those interests, yes, and the potential liability of the Federal Government.

Senator MURKOWSKI. Just go a little further with potential liability of the Federal Government, into the Department of Interior. I would like to at least for the record have the point made as to potentially what is the liability—is it from a minority shareholder or group?

Mr. BRITT. Yes.

Senator MURKOWSKI. And could you expand a little bit on what that liability might consist of?

Mr. BRITT. There may be something I can better provide for the record, but basically that the Court would find that this law has basically operated to take the value of the shareholder's individual interest without just compensation. The remedy for that would be compensation, the valuation of which I am not sure I could estimate for you.

Senator MURKOWSKI. Would the Department have the capability to provide for the record, and the record will be open for a couple of weeks, an analysis of the legal application, theoretically, of the proposed legislation—House and Senate bill versus the State Supreme Court ruling so that we may include that in the record?

Mr. BRITT. We would be happy to, Mr. Chairman.

[The information follows:]

IMPACT OF HODEL V. IRVING ON PROPOSED 1991 AMENDMENTS

Q: You request our views on the impact of a recent Supreme Court opinion, Hodel v. Irving, No. 85-637 (Slip Opinion, decided May 18, 1987), on pending legislation, S. 1145, which would amend the stock provisions of the Alaska Native Claims Settlement Act ("ANCSA").^{1/}

A: The question presented in Irving was whether the "escheat" provision of the Indian Land Consolidation Act of 1983, Pub. L. 97-459, Tit. II, 96 Stat. 2519, effected a "taking" of several Indian decedents' properties without just compensation in violation of the Fifth Amendment of the Constitution. The Indian Land Consolidation Act provided that any undivided fractional share of trust or restricted land subject to a tribe's jurisdiction would escheat to the tribe upon the death of the owner if the interest represented 2 percent or less of the total acreage in the tract and the interest had earned less than \$100 in the year preceding the escheat. 96 Stat. 2519. The appellees in this case were, or represented, heirs or devisees of Indian decedents who owned three estates totalling \$100 in one case, \$2,700 in another and \$1,816 in the third. But for the Indian Land Consolidation Act, these estates would have passed to appellees or those they represented.

^{1/} This legislation is also called the "1991" legislation because it addresses provisions in ANCSA prohibiting alienation of stock issued by Native corporations until 1991.

The Supreme Court unanimously found the escheat provision to be unconstitutional, with Justice O'Connor writing for the majority, and the other Justices writing three concurring opinions.^{2/} In so finding, the Court affirmed the opinion of the Court of Appeals for the Eighth Circuit. Irving v. Clark, 758 F.2d 1260 (1985). The Eighth Circuit had held that the decedents had a right to control the disposition of their property at death, that appellees had standing to invoke that right and that the taking of that right without compensation violated the Fifth Amendment. In so holding, the Eighth Circuit reversed the District Court, which had held the statute constitutional based upon its finding that Congress had the plenary authority to abolish the power of testamentary disposition of Indian property and to alter the rules of intestate succession.

In its Opinion, the Supreme Court found that appellees had standing to assert the decedents' Fifth Amendment rights as the interests of the appellees and decedents were virtually the same, and, therefore, appellees were the appropriate parties to serve

^{2/} Justices Brennan, Marshall and Blackmun, in a one paragraph concurrence, stated their belief that the majority decision had to be limited to the particular facts in the case. The Chief Justice and Justices Scalia and Powell, in another one paragraph concurrence, took the opposite position, arguing that the majority opinion limited an earlier, contradictory opinion, Andrus v. Allard, 444 U.S. 51 (1979) (upholding the abrogation of the right to sell endangered eagles' parts as necessary to environmental protection regulatory scheme), to its facts. Finally, Justices Stevens and White, in a lengthy concurrence, found that it was not necessary to reach the "taking" argument, the relevant provision falling first because it failed to provide due process in the form of adequate notice to Indians affected by it.

as decedents' representatives. Irving at 5-7. Turning to the merits, the Court found that the Government "goes too far" with the escheat provision and could not, without compensation, completely abolish "one of the most essential sticks in the bundle of rights that are commonly characterized as property," i.e. the right to pass that property upon death. Irving at 10-13. The Court further held that complex inter vivos transactions, such as revocable trusts, were not adequate substitutes for the rights taken. Irving at 11.

In reaching this conclusion, the Supreme Court recognized the broad authority that Congress possesses to regulate the descent and devise of Indian trust lands. Irving at 7. It further agreed that encouraging the consolidation of Indian lands is a "public purpose of high order." Id. Despite this authority and purpose, the Court nevertheless subjected the provision in question to the standards applicable to non-Indian property regulations. This is perhaps the most important aspect of the case in terms of analyzing "1991" legislation, i.e. that legislation will be measured constitutionally by non-Indian Fifth Amendment "taking" standards, rather than by some different standard that may be applicable only to Indian legislation.

Having established that Indian property regulations will be subject to routine Fifth Amendment scrutiny, the Court reaffirmed the tests that should be used in that review. Recognizing that "the Government has considerable latitude in regulating property

rights in ways that may adversely affect the owners," the Court reaffirmed the framework for deciding whether such a regulation of property amounts to a taking requiring just compensation. Specifically, the Court identified the important factors to be considered as: (1) the economic impact of the regulation; (2) the interference caused by the regulation with reasonable investment-backed expectations; and (3) the character of the government action. Irving at 8-9.

Applying these factors to the escheat provision of the Indian Land Consolidation Act, the Court found that the economic impact could be substantial (even though the monetary value of some of the property was low, the right to pass it on was itself recognized as a valuable right), the investment-backed expectations were dubious, and the character of the regulation was extraordinary. The Court seemed to base its conclusion as to the constitutionality of the provision primarily on the last factor, finding that the total abrogation of both descent and devise could not pass constitutional muster.

Applying these factors to the Senate's "1991" legislation, S. 1145, could result in the same conclusion. The Senate bill, like the bill recently passed in the House, H.R. 278, is intended to provide for the retention by Alaska Natives of lands given and stock created in the ANCSA settlement. The bill attempts to accomplish this purpose by allowing issuance of stock to new Natives not included in the original settlement, by allowing

extension of alienation restrictions originally placed on Native stock,^{3/} by allowing transfer of assets of Native corporations to traditional Native organizations, and by mandating restrictions on voting rights of non-Native stockholders.

At least two of these provisions of S. 1145 could be subject to attack under the Fifth Amendment. Specifically, these are: (1) the provision allowing Regional Corporations to issue additional shares of settlement common stock without consideration (Section 4); and (2) the provision indefinitely extending alienability restrictions imposed on settlement common stock (Section 7).^{4/} These provisions, like the provision in Irving, may well run afoul of the standards for a constitutional property regulation in several respects.

^{3/} In S. 1145, alienability restrictions are automatically extended for stock issued by village, urban and group corporations (Section 7) unless terminated by a shareholder vote. Alienation restrictions are extended for stock issued by regional corporations only if the corporation affirmatively votes for such extension (Section 10).

^{4/} There are other provisions in S. 1145 that may also be subject to taking challenges, e.g., the provision mandating that Native corporations deny voting rights to certain non-Native stockholders (Sections 5 and 10). This provision was contained in ANCSA, but in a form allowing the Native corporation to impose such prohibitions at its discretion. See 43 U.S.C. § 1606(h)(3)(B). We do not attempt to discuss every provision of S. 1145 that may raise constitutional questions. Rather, we discuss here only the major provisions that have the greatest potential for being declared unconstitutional under the Fifth Amendment.

Section 4, allowing additional issuances of stock without consideration, could result in substantial dilution of the value of stock held by present shareholders in Native corporations. Such dilution would represent a major economic impact and would raise concerns about the interference with investment-backed expectations. In addition, the market value of the stock might be affected as a result of the ever-present potential for further dilution through additional stock issuances. The provision, in short, represents a substantial loss of property rights, i.e. the value of the stock, without any compensation, and might be viewed by the courts as an unconstitutional taking.

Likewise, section 7, allowing indefinite extension of alienation restrictions, could have a major economic impact on some shareholders and could substantially interfere with investment-backed expectations of settling Natives who were told in 1971, before they opted into the ANCSA settlement, that they could sell their stock in 1991. See 43 U.S.C. § 1606(h). In light of that reliance, the prohibition on alienation might well be viewed as destroying "one of the most essential sticks in the bundle of rights that are commonly characterized as property...", i.e., the right to freely alienate that property.

The proposed bill does provide for dissenters' rights in the form of possible dissenting shareholder compensation. However, this compensation may be judged inadequate for several reasons: (1) it is discretionary in almost all cases, that is, it is dependent

upon an additional affirmative resolution of the corporation at the time the action opposed is taken; (2) it can be calculated on the value of the stock as restricted stock and that calculation can exclude from the value of corporate assets the value of much of the corporation's land; and (3) it can be paid by issuance of a negotiable note or common stock, which, if held by a non-Native, is non-voting stock. See Sections 9 and 10 of S. 1145.^{5/}

Therefore, we must conclude that the Supreme Court decision in Hodel v. Irving, which finds Congress' power to enact Indian legislation insufficient to alter traditional constitutional analysis and which also recognizes that the right to pass on property is itself a valuable right, portends a possible successful Fifth Amendment challenge to some of the key provisions of both H.R. 278 and S. 1145.

^{5/} The provisions in S. 1145 which automatically extend for an indefinite period the alienation restrictions set out in ANCSA may also raise due process questions. Although these restrictions may be terminated by amendment of a corporation's articles of incorporation (Section 7), the question remains whether this procedure provides adequate notice and opportunity to dissenting shareholders to avoid the adverse impacts of the original Government action extending the restrictions.

Senator MURKOWSKI. I appreciate that. Tell me about the two disclaimers. You have one in the Senate bill and one in the House bill. Which do you consider the most neutral on the issue of sovereignty, and do you have any particular comments one way or the other on that?

Mr. BRITT. We think the Senate version is far more effective in an attempt to protect the neutrality of these amendments. At the same time, as long as the QTE provision is in we are still concerned about courts giving that literal effect. We think that as far as a disclaimer, it has gone about as far and is as effective as possible in trying to anticipate ways in which courts could construe the amendments and in particular the changes to the corporate structure involved in the amendments in furtherance of a claim of sovereignty.

At the same time, it is difficult to always tell what courts can do. If they find parts of the statute conflict with others they must construe them together and find ways around that. The disclaimer, while thorough, speaks mainly to these amendments. There may be ways by which courts could find or uphold sovereignty claims without the exact use of these amendments, so it is always of a little concern to us trying to anticipate what courts may do with those. We think the Senate version is clearly preferable, though, to the House version.

Senator MURKOWSKI. What type of sovereignty disclaimer do you feel is most appropriate, recognizing your comments on both the Senate and House versions?

Mr. BRITT. Well, I think, Mr. Chairman, that our concern is mainly that a court, in looking at this statute, will be faced with a question of—they know that Congress knows how to say that there is no Indian country when they intend that. In the absence of that, the court will try to construe what was in Congress' mind. If the intent is to maintain neutrality and not to take a position on that either way, then we think the Senate version does that about as well as possible. We would, I think, prefer Congress to speak to the issue affirmatively as to what their intent is, but if that is not possible we would prefer the Senate version.

Senator MURKOWSKI. Would the Department prefer to see the QTE authority removed from the bill?

Mr. BRITT. We think that the QTE provision is the single most troubling provision as it relates to the issue of sovereignty. We think that is the one provision that stands the most risk of misinterpretation in this set of amendments. Mr. Chairman, our position has looked at the amendments as a whole. I do not have a specific position as to that except to say those concern us greatly. We do not favor the QTE provision.

Senator MURKOWSKI. You do not favor it but you are not coming quite up to suggesting it be removed from the bill?

Mr. BRITT. Well, as to whether the removal of that provision would be enough to make us support the bill, I guess I cannot say. We think particularly allowing the removal of all assets from a corporation into another entity, merging the land title from the corporation to that tribal organization are the types of changes that we think could be misinterpreted by the court, the disclaimer notwithstanding.

Senator MURKOWSKI. Now, we have attempted to put language into the bill that states, in effect, that there is nothing that would intend to foster the cause of sovereignty in this legislation nor to go back and address whatever implied sovereignty may have existed under ANCSA, or anything else. In other words, this particular legislation is neutral. And the disclaimer of saying it is not intended to foster certainly makes a point of legislative intent, but you still see an exposure there. Is that correct?

Mr. BRITT. We are still concerned, Mr. Chairman, including such things as the designation of the original ANCSA as Indian law. That may have an effect in the courts' mind as to what Congress intended under the 1971 Act, and while it does not use the 1987 amendments to foster sovereignty, they may find that tips the balance in one way. I guess our concern is that we think you have said it as well as possible. Courts have to construe also what you have done. To the extent they find conflicts with that, particularly as to the QTE provision, we think there is a danger that a court would not uphold your written word on this issue.

Senator MURKOWSKI. Tell me, Mr. Britt, let us assume for a moment that the Senate bill comes out of this Committee with a recommendation that it is passed on the floor. What kind of a recommendation is the Department of Interior prepared to make to the President with regard to either signing or vetoing the bill in its present form? I have saved the best for the last.

Mr. BRITT. You have saved the best to last. It is a question. I had a conversation with the Secretary as recently as Friday, the very one we talked about. I do not have a position. We talked about his strong concerns, his strong feelings on this issue about protecting those individual shareholders' rights, the fact that he does not believe that either bill meets that muster. I pressed him for the same question and he said, you know, you never can tell what will happen when the time comes, so I guess I cannot tell you on that hypothetical circumstance, depending on what the bill looked like, what our final action would be. I know he feels strongly against this bill and these provisions. We have covered a lot of ground and have had a lot of discussion. We all have a lot of stake in it. And I would not venture a guess as to what would happen at this point.

Senator MURKOWSKI. Thank you very much, Mr. Britt. We will look forward to having the inclusion of your legal analysis within the next ten-day period. Is that sufficient?

Mr. BRITT. That is fine. Thank you.

Senator MURKOWSKI. All right. We wish you a good day, and we appreciate your frankness in conveying the thoughts of the Secretary of the Interior, Don Hodel.

Our next witness is John Katz, director of the State Federal Relations and special counsel to our Governor. John, I want to welcome you to the Committee and wish you a good morning. I note that you have also a rather lengthy statement, and I assume that this will provide the attorneys in the audience with a full day of analysis with the clock ticking.

Please proceed, John.

**STATEMENT OF JOHN W. KATZ, DIRECTOR OF STATE/FEDERAL
RELATIONS AND SPECIAL COUNSEL TO GOVERNOR COWPER
OF ALASKA**

Mr. KATZ. Thank you, Mr. Chairman.

For the record, my name is John Katz. I am Director of State/Federal Relations and Special Counsel to the Governor of Alaska. With your permission, I would like to insert my written statement in the record and summarize it briefly.

Senator MURKOWSKI. It will be entered in the record as if read.

Mr. KATZ. The State of Alaska strongly supports legislation designed to address the imminent deadlines contained in the original Native Claims Settlement Act. In particular, we are concerned that if these 1991 deadlines are not addressed, native corporations run the risk of losing their land.

As you know, the Settlement Act marked a new era in the Federal Government's treatment of Alaska natives and American Indians. Gone were the days of conquest, reservations, treaties, and allotments. In lieu thereof the Congress established a regime consisting of land and money and State chartered corporations.

Despite the lofty objectives of the Congress, implementation of the Settlement Act has not yet achieved those objectives. There are many reasons for that. They include initial bureaucratic recalcitrance, the vagueness and complexity of the Settlement Act, litigation, and the need by the Settlement Act corporations themselves to gear up to deal with the complexities of the legislation.

Since enactment of the Settlement Act some 16 years ago Alaska's native people have now had the opportunity to review its implementation and to come to certain conclusions about its future. We believe that except in circumstances where there are clear conflicts between State and Federal policy on the one hand and the desires of the native community on the other that these conclusions should be respected.

We have viewed each provision of the proposed legislation from this point of view, and have determined that there are many provisions which are not of institutional concern to the State of Alaska. These provisions fall into the general category of issues which we view as internal to the native community or internal to the operation of the Settlement Act corporations. So, for example, the State has expressed no position on the so-called opt in, opt out provision, dissenters' rights, the alienability of shares, and certain other matters of a similar ilk.

We do, however, have four strong institutional interests and concerns. The first of these concerns the matter of native sovereignty. We do not see the 1991 amendments as sovereignty legislation nor should they be permitted to become such. In our view, native sovereignty concerns the issues of governmental power and the extent of such power. In our opinion, these amendments should not expand, diminish or otherwise affect the body of Indian law which existed prior to the date of enactment of the amendments.

Problems, however, arise with the provision concerning the transfer of lands to qualified QTEs. The State does not object to such transfers. In fact, we support them where native corporations desire to effect such transfers. The Governor feels very strongly

that the existing Settlement Act corporations may in all instances not be the most appropriate vehicle for retaining land conveyed under the Settlement Act.

However, we also feel that if the QTE provision is included, there must be a strong disclaimer provision. It is for that reason that the State strongly supports the disclaimer provision contained in the Senate bill. Under the House bill the transfer of lands to a QTE could be used in and of itself as an additional argument for native sovereignty. We do not think that that is what the 1991 amendments contemplate.

In short, the State opposes the expansion of Indian country in Alaska beyond those places where it may already exist. These matters have been dealt with in correspondence between the Governor of Alaska and the President of the Alaska Federation of Natives. We are not insensitive, however, to the needs and demands of rural Alaska. It is for that reason that the Governor has indicated that he would like to explore with the native community whether there are alternative forms of government that might be more appropriate in rural Alaska than those forms that currently exist. However, he has expressed that view with one very important caveat, and that is that that exploration occur within the context of the Alaska constitution.

We recognize that that approach may not be a total panacea for some of the concerns that have led to the sovereignty movement in Alaska. However, we believe that such an approach could be of some assistance.

The State's second institutional interest concerns the preservation of its traditional authority to condemn land for a valid public purpose. The State is in a developing status with an embryonic infrastructure. Moreover, a complex land ownership pattern is currently emerging. It is for these reasons that both the House and Senate bills contain language which would preserve the State's traditional eminent domain authority in two circumstances. One, where lands are held by a Settlement Act corporation. Second, where lands have been transferred to a Qualified Transferee Entity.

We feel that such treatment is consistent with prior Congressional enactments and recognition. For example, Section 17(b) of the original Settlement Act evidences a Congressional interest in preserving easements for public access. A provision of ANILCA recognized the State's eminent domain authority in enacting the land bank provisions of that legislation. In making this request, we are not unmindful that some abuses have existed in Alaska. The State Administration has taken steps to resolve these abuses, which we believe are isolated. In the future, we believe that there are sufficient remedies in the estate administrative structure and in the courts to resolve these problems and we would not like to see the Federal Government intervene or change established relationships in ways that are not consistent with its treatment of other States.

The third institutional interest of the State concerns the taxation of developed property. We support the continuation and extension of the immunities from civil process and from taxation as they are embodied in the Senate bill. We feel that if these exemptions are terminated, native corporations may lose their land or at the very

least they will be compelled to contemplate development for the sole purpose of paying property taxes. That is not a result that we feel that Congress contemplated.

However, we do believe that it is very important to differentiate between developed property, which is subject to taxation, and undeveloped property, which is not. We believe that the definition of developed property in the Senate bill contemplates or meets that criteria. That definition evolved last year in discussions between the Congressional delegation, the State administration, native corporations, and other affected parties. It is also very similar to definitions which already exist in State law.

The fourth institutional interest of the State concerns the interrelationship between the Settlement Act and Federal programs that benefit Alaska natives. Despite what we think is very strong statutory direction and legislative history, some Federal agencies have shown a disquieting tendency to try to terminate or curtail Federal programs which have applied to Alaska natives as American Indians or to include Settlement Act benefits in the calculation of eligibility for certain Federal programs such as food stamps and Social Security.

We think that that kind of tendency is inconsistent with the purposes and intent of the Settlement Act. If it is not dealt with, the Federal Government in essence will be taking with one hand what it gave in the Settlement Act with the other. It is for this reason that we support Section 17 of the bill pending before you. That section contains two principal provisions. The first would assure that the Settlement Act cannot be used by Federal agencies to terminate or curtail programs which relate to Alaska natives as American Indians and aboriginal people. The second would assure that with the exception of cash dividends in excess of \$2,000 per year, cash and stock dividends, the transfer of land and interests in land, and other benefits cannot be used in the calculation of eligibility under Federal programs such as food stamps and Social Security.

Mr. Chairman, we believe that the original Settlement Act sought to provide the Alaska native community with certain options. One of those options was to use the land and money provided in the Act to continue their traditional lifestyle had to protect their heritage. Another option was to participate more fully in a lifestyle characteristic of western culture. We see the 1991 amendments as perpetuating those options, and it is for that reason that with the two or three caveats that I have expressed this morning, the State administration very strongly supports the prompt enactment of the 1991 legislation.

Thank you for this opportunity to testify. I would be pleased to try to respond to any questions which you might have.

[The prepared statement of Mr. Katz follows:]

TESTIMONY OF JOHN W. KATZ
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS
May 19, 1987

Mr. Chairman and Members of the Subcommittee:

My name is John W. Katz. I am Director of State/Federal Relations and Special Counsel to Governor Steve Cowper of Alaska. On behalf of the Governor, I want to thank you for this opportunity to testify on S.1145.

We strongly support the enactment of legislation which would address the problems created by the rapidly approaching 1991 deadlines contained in the Alaska Native Claims Settlement Act (ANCSA) of 1971. In particular, we are concerned that Native corporations established under the Act not find themselves in a position where they might lose their land because of the expiration of certain protections which have been operative since 1971.

As you know, the Settlement Act marked a major change in the Federal government's treatment of Native Americans. Many in Congress felt that past Federal Indian policy had failed to foster the well-being of Indians in the general society or to protect Indian pride and heritage. In reaction, Congress chose a different approach to settle the aboriginal land claims of Alaska's Native people. This approach included monetary compensation of almost a billion dollars, the grant of 44 million acres of land, and the establishment of Native controlled, state-chartered corporations to manage these assets.

While the Federal objectives in enacting the Settlement Act are laudable, the Act has yet to achieve the high purposes envisioned by its drafters. Implementation has been slowed by litigation, initial bureaucratic recalcitrance, the necessity to establish viable corporations and to train corporate managers, and the unforeseen complexities of managing and conveying land to individuals and corporations. Native corporations have not received assets in a timely fashion. Further, the benefits accruing to individual shareholders have been less than originally expected.

Alaska's Native people have now had time to consider the known and probable effects of ANCSA implementation, and to come to conclusions about what is best for them in the future. The Cowper Administration supports the intent and purpose of amendments which address Native concerns about the 1991 date. Some of these amendments have been necessitated by significant delays in ANCSA implementation. Even more importantly, a large majority of Alaska's Native people has come to certain conclusions about the continuing ownership and management of their corporations. In our opinion, these decisions should be respected unless they are in clear conflict with established State or Federal policies. Therefore, the State has not taken a position on such issues as the continuation of restrictions on stock alienation, dissenters' rights, and the allocation of benefits to Natives born after 1971.

Another series of proposed amendments would maintain certain immunities from civil process and from taxation. The purpose of the original tax exemption on undeveloped Native land was to provide a period during which Native corporations could develop the cash flow necessary to pay taxes. This objective has been thwarted by many factors beyond Native control which have impacted adversely on corporate cash reserves. In addition, many Native people desire the option of preserving their land in an undeveloped state, considering it the foundation of Native culture. We

have no problem with amendments which would allow Native people to protect their land base by extending the immunities from civil process and property taxes, so long as the land involved remains undeveloped. We believe that the definition of development contained in S.1145 is acceptable from this point of view.

Essentially, the continuation of the land-related immunities currently provided in Federal law gives Native people the option to protect their traditional culture or to use their land for economic development. In our opinion, the preservation of this right of choice is consonant with the original purposes of ANCSA.

It is important to distinguish the 1991 issues from matters such as Native sovereignty. While some people have sought to link these issues together, they raise markedly different legal and policy considerations. We do not perceive the 1991 amendments as sovereignty legislation. By our definition, Native sovereignty involves questions of governmental power and the extent of such power. In our opinion, the 1991 amendments should not expand or otherwise affect the body of Indian law from which Native sovereignty is derived, nor should they serve as a vehicle to enhance sovereignty arguments in Alaska.

In reviewing H.R.278 and S.1145, it is apparent that the provision present in both bills which allows the transfer of village corporation lands to a qualified transferee entity (QTE), including Indian Reorganization Act (IRA) and traditional Native councils, has the potential to enhance arguments that sovereignty proponents might have concerning the presence of "Indian country" in Alaska. Consequently, as long as the 1991 amendments contain a provision permitting the transfer of lands to a QTE or any other provision raising possible sovereignty claims, the State feels that a disclaimer section must also be included in the bill.

H.R.278 and S.1145 contain different disclaimer provisions. Of the two, the State favors the language in the Senate bill. Under the House version, while the language permitting transfer could not be used to show Congressional recognition of sovereign tribal authority, the fact of ownership of the land by an IRA or traditional Native council could be used to establish the existence of "Indian country," and consequent tribal governing powers. Under the Senate disclaimer language, the fact of ownership of transferred lands could not be used to establish the existence of "Indian country." We believe that this language is necessary to ensure that the transfer of land to a QTE will not serve as a vehicle to enhance a claim of "Indian country."

We understand that the reality of life in many rural villages is not always well suited to the village corporation structure set up by ANCSA. Therefore, the State supports the concept of transferring village corporate lands to an organization better suited to administer those lands in keeping with village needs and culture, provided that such a transfer does not lead to the creation of "Indian country."

Governor Cowper has previously stated his support for efforts to establish more appropriate forms of government in rural Alaska. However, support for these changes is based on the premise that they be accomplished in a manner that is consistent with and subject to the provisions of the Alaska Constitution. The State Administration expects to work with the Native community and others in a mutual exploration of possible forms of government for rural Alaska under the State Constitution.

The State also strongly supports the provisions of S.1145 which would maintain our traditional authority to condemn Native lands for a valid public purpose. Under the Senate bill, this authority would apply to lands conveyed pursuant to the Settlement Act and to lands transferred to a Qualified Transferee Entity. In both cases, such authority is necessary to provide for public needs in a developing state. In our opinion, the authority preserved in S.1145 does not differ in scope or substance from the traditional eminent domain powers of any state with respect to non-governmental lands within its borders.

The original Settlement Act sought to give Alaska Natives the option of protecting their traditional culture and/or following economic and other pursuits more characteristic of life in other places. In our judgment, well conceived 1991 legislation will perpetuate these options. Accordingly, I want to reiterate our strong support for the prompt enactment of 1991 legislation which addresses the objectives and concerns articulated here.

Thank you for this opportunity to present the State's views on these important matters. If you have any questions concerning our position, I would be pleased to answer them.

Senator MURKOWSKI. Thank you very much, Mr. Katz.

I noted the State's position on opt in, opt out dissenters' rights is neutral—that you feel, as you have enunciated on the issue of sovereignty, that you have a concern. Let me ask you, which of the two disclaimers do you believe is the most neutral with respect to sovereignty in the two bills and why?

Mr. KATZ. We favor the Senate disclaimer language. We feel that under the House bill the transfer of lands from a Settlement Act corporation to an IRA Council or traditional council in and of itself could be used as an argument that sovereignty exists, and we do not think that is the intent of these amendments, which are designed to perpetuate the status quo which existed prior to the enactment. Under existing law, it is arguable whether the authority to transfer lands from a Settlement Act corporation exists.

If it does, several corporate loopholes in State law must be complied with. This may be a grant of new authority, and if it is, we feel that it needs to be conditioned by a clear statement that the transfer itself cannot be utilized to argue for sovereignty, and we feel that the Senate bill accomplishes that purpose.

Senator MURKOWSKI. You mentioned alternative forms of government which Governor Cowper has referred to on previous occasions as being, if you will, an open alternative as long as it does not result in achieving a sovereign state or another governmental entity or something of that nature.

I wonder if you could expand a little more for the record on your interpretation, perhaps as coming through the Governor as a State's official position, on what other alternative forms of government you could conceivably imagine, recognizing that one of the considerations that we developed as a result of the hearing was to allow those regions that felt that the corporate structure was not what they felt was appropriate, but had more of an association with a tribal association, with the land belonging to basically everybody, the dependence on one another associated with the tribal association versus a corporate association that is represented by shares of stock individually.

Basically we set up a vehicle to allow the transfer of assets to other entities with the intent to allow it but to make sure that it did not achieve a sovereign status once it transferred into whatever other entity, and I am wondering if you could expand a little more on this aspect of alternative forms of government that would meet the criteria of not being a vehicle for sovereignty, but would be short of that.

Mr. KATZ. I do not mean to be evasive here. It is simply that the State has not yet really embarked on that exploration with the native community. And I think it would be sort of premature for me to guess what the results of that might be. The Governor has wanted to await the termination of the legislature which has now happened, I guess, and so we have established the mechanism to begin that dialogue.

His only initial caveat is the one that I expressed earlier, and that is that he feels very strongly that that exploration should occur within the context of the Alaska constitution. But I think the State is open to looking at option that might pertain to the forms of government that apply in rural Alaska and also the vehicles to

receive land from the Settlement Act corporations. In saying that, however, I want to make clear that we are not opposing the QTE section as you have embodied it in S. 1145. We do not object per se to the transfer of lands to traditional councils or to IRA councils. However, we do believe, as I have indicated, that if that were to occur, then the strong disclaimer language in the Senate bill should be included.

Senator MURKOWSKI. Let us talk for a moment about taxation. In the bill there is a proviso that for lands in a governmental entity, whether it be a borough or whatever, if they are developed, there is a two-and-a-half-year, 30-month period in which taxes would be retroactive to the local government entity. I believe we had input in previous hearings from the League of Alaska Cities, various boroughs, particularly in Anchorage, Fairbanks, and Juneau, that there were properties within the boroughs that were held by corporations that were not subject to taxation, but had the potential of being developed as opposed to just subsistence lands.

Could you elaborate for the record on how you explain to a taxpayer in the borough that has vacant land that is being taxed currently, and next to his land sits another piece of land that a village corporation, or a regional corporation may own that is tax-exempt currently, and obviously that land is not subsistence land—it was selected on an exchange for some other reason. Can you tell us how we give some comfort to the person who must pay taxes on that currently?

Mr. KATZ. We have not really taken a position on the sub-issue that you have raised of recapture. That in the discussions we had was more of a concern of the local jurisdictions with the authority to tax real estate. Our concern dealt with the slightly larger issue that is also, I think, framed by your question, and that is to draw an adequate differentiation between developed and undeveloped property for tax purposes. We felt that if property were productive, if it were deriving revenue, then native corporations would be in a position to pay taxes without either losing their land or having to undertake developments simply to pay property taxes.

That was the State's institutional position. Within that rubric I think some municipalities were concerned about the recapture with respect to lands that had not been taxed historically.

Senator MURKOWSKI. Well, we have taken the general position that if it generates revenue and it is in a governmental entity, a borough or what have you, it is appropriate that there be a tax assessment—and that is in the non-legal language of the application of principle—as opposed to subsistence lands that have no potential of generating revenue, and if they were taxed, there would be no base for revenue in order to meet the tax obligation. The concern there, of course, would be the potential of losing that subsistence land, which is not the intent, obviously, so it would appear that the legitimacy of a 30-month retroactivity on land that has potential for development if it is developed is a reasonable way to go back and try and provide a revenue base to the appropriate borough or governmental entity, and that is the basis it was in there.

John, I have one more question for you, if I may, and it may be asking for your opinion as opposed to the Secretary of Interior, because you have had a long association with ANCSA and this par-

ticular 1991 legislation. It is my understanding that the Secretary basically believes that the opt out provision denies the individual Native right. I think that was enunciated by Mr. Britt today.

Can you comment a little bit on that point for us, because it is a point of contention here. You do not have to speak for the State if you do not want to. You can speak just as one who has been very close to this subject.

Mr. KATZ. I guess I was startled to realize when Senator Stevens made his comments earlier that I have had the same 16-year association with this legislation that he has had.

Senator MURKOWSKI. Now we have got two experts.

Mr. KATZ. I do not think there are any experts on this legislation.

Expressing my personal view, because the State does not have an institutional view, I think that the question that you have propounded needs to be viewed in the context of Indian law and legislation, and it seems to me that some of the legal concerns that people would justifiably have, if we were dealing with General Motors or RCA, do not really pertain in the context of Indian legislation as the Settlement Act was and as these amendments are.

In those circumstances, Congress has more authority, almost plenary power to fashion a settlement which in its judgment meets the needs of the body politic of the native community. I believe that if your question is viewed in that context, that some of the concerns about dissenters' rights may not be operative here, and may not prevail in a court, but I do have to agree with Mr. Britt's comments that one never knows how a court will react. There are some precedents, but they are really not directly on point, and I cannot say with certainty whether a court would adopt the prototype of Indian legislation or in the alternative would look more closely at the general body of corporation law.

Senator MURKOWSKI. Well, we have got the dilemma of the Secretary of Interior and the Department of Interior who oppose the opt out provision, believing that it denies the individual rights, and the position that has been expressed by some of the Native community that ANCSA was basically a communal settlement, not an individual settlement, and that the rights of the individual must basically take a back seat to the community as a whole. Yet we have the fundamental situation of having corporations with individual stock ownerships. It is a rare mixture, but that is the crux of our problem, John, on this issue. Should Congress take away the rights of the individuals in this instance, and indeed, is there constitutional exposure on the question as a consequence of the recent Supreme Court case which Steve Britt commented on, or should the Native people have the right of that choice as indicated by vote with the corporate settlement that they receive?

Mr. KATZ. That in a sentence is the dilemma. I believe that while there is no certainty, the courts have clearly recognized that Congress has almost plenary authority in the past with respect to the treatment of Indian and native issues. I do think that it is possible to fashion a provision which pretty well immunizes the Federal Government from liability to the extent that that becomes a major policy concern.

Senator MURKOWSKI. The last question is, what obligation does Congress have to protect those dissenters that want to opt out? Congress is not going to appropriate the funds, so the corporation has to stand the exposure, and we have heard Mr. Britt say that in his opinion the exposure of the corporation is minimal.

Mr. KATZ. Your point raises another very interesting question which I have given a lot of thought to over the years. That is that the native culture, if I can be so presumptuous to observe it, is a collective culture. It does stress collective rights rather than individual rights, and I think the problem that we are having here is the superimposition on that culture of a mechanism that we constructed in western law to deal with other problems, and that is the corporate form. The corporate form in many ways does take cognizance of dissenters' rights and calls them rights and obligates the majority to deal with them and to pay for them in certain circumstances.

However, that approach is clearly at variance with the basic cultural thrust of the Alaska Native community, which is collective, and I do think that it may be litigated, but that in other circumstances Congress has dealt with these matters in a collective sense, and that that exercise of authority has been vindicated.

Senator MURKOWSKI. Lastly, assuming we cannot get a consensus from the Native community on the question of opt in, opt out dissenters' rights, QTE disclaimer, do you have any opinion on whether or not we should go for just a simple extension of 1991? In other words, pursue what we can agree on, or attempt to continue to try and work out, even though it may be unlikely, a resolve on the contentious points?

Mr. KATZ. I do not know if it will be possible to develop an absolute consensus. The native community is no different than any other community. I think there may be a clear majority even if it is not a consensus, and in the normal course those decisions would be respected. The State administration is very concerned about what will happen in 1991 if there is no legislation. We can already see a trend in some native communities. There is a significant risk that native people will lose control of their corporations or that they will lose their land, and we think that neither Congress nor the State which supported the original enactment of the Settlement Act ever contemplated that sort of situation.

In order to avoid that, we think it is necessary to enact 1991 legislation promptly so that the corporations can plan for that eventuality. I would say that if the Congress is deterred by the lack of consensus on the points that you mentioned, then yes, at some point in time we all should contemplate the enactment of a pure corporate bill so that we can avoid the difficulties and the ills that I think virtually everybody that is associated with the Settlement Act perceives will occur in 1991.

Senator MURKOWSKI. John, I want to thank you for your testimony and for your willingness to depart into some other areas based on your own 16 years of experience on this legislation. I wish you a good day, and please thank Governor Cowper for the official statement of the State of Alaska which you delivered.

Mr. KATZ. Thank you.

Senator MURKOWSKI. I would like to call at this time on Panel One, and joining us will be Janie Leask, president of the Alaska Federation of Natives; Jonathan Soloman, vice president, Tanana Chiefs Conference, Fort Yukon; John Borbridge, executive committee, Alaska Native Coalition, Anchorage; and Willie Kasayulie, Alaska Native Coalition in Anchorage.

There is going to be a little floor action that could begin at any time, so I may have to recess temporarily for an appearance on the floor, but we will work something out, so welcome to Washington. I know many of you have traveled at great length. You brought the warm Alaskan weather with you which we have suffered through at least one day collectively, and I am glad to see that none of you have melted. I almost did yesterday.

Please proceed. Janie, you are first on my list, but you have the flexibility of calling them any way you wish.

STATEMENT OF JANIE LEASK, PRESIDENT, ALASKA FEDERATION OF NATIVES, ACCOMPANIED BY DON MITCHELL

Ms. LEASK. If the other panelists, Mr. Chairman, do not mind, I think I will follow that process and go first with my testimony. For the record, my name is Janie Leask, and I am president of the Alaska Federation of Natives. AFN is a statewide political organization.

Senator MURKOWSKI. I wonder if you could pull the microphone a little closer to you.

Ms. LEASK. Certainly.

Senator MURKOWSKI. Thank you.

Ms. LEASK. Is that better? The AFN board of directors consists of representatives from the profitmaking regional corporations, representatives from the nonprofit native associations, and representative from village corporations and IRA and traditional councils. We would like to thank you for the opportunity to testify here today.

As you well know, AFN has worked on 1991 issues for about the last five years since 1982, and we have identified both problems and proposed solutions, taking them to a number of various AFN conventions to reach a consensus within the native community.

The problems and the consensus which have been previously presented to subcommittee hearings held in Alaska and in Washington, D.C., during last year's Congress, and I would like to incorporate AFN's testimony during those hearings into the record of this hearing by reference.¹

As you mentioned earlier, H.R. 278 is identical to last year's bill that was passed by the House of Representatives, H.R. 4162, and S. 1145 is very similar to last year's Senate substitute of S. 2065, and although the Senate substitute of last year improved upon the text of H.R. 4162 in a number of important respects, the amendment was disapproved by the delegates who attended the 1986 October convention of the AFN. The delegates rejected the Senate amendment for three specific reasons, and these reasons are valid today, and I would just like to briefly go over those, because those highlight our main concerns.

¹ See Senate Hearing Nos. 1036 and 1072, 99th Cong., 2d Sess. (May 24 and 27, July 10 and August 4, 1986).

First, the amendment allowed restrictions on the sale of regional corporation stock to lapse unless the corporation obtained an affirmative vote of its shareholders prior to 1991 to continue the restrictions. From the beginning of the 1991 process AFN and its member corporations have been adamant that village and regional corporation stock must remain inalienable until restrictions are purposefully and knowingly terminated by an affirmative vote of the shareholders. This so-called opt out approach is the heart of AFN's 1991 legislative effort. To allow restrictions to terminate through an action or to force the shareholders of a corporation to make an irrevocable decision before they have had the time to gather the facts and consider the consequences before deciding their collective fate would violate the spirit of ANCSA's commitment to native self-determination. And in that regard it is important to note that the Senate amendment accepted AFN's rationale and recommendation and included an opt out approach for village corporation shareholders.

What the amendment failed to consider when it rejected the AFN recommendation that regional corporation shareholders also be allowed to opt out is that most regional and village corporations have the same shareholders. They are the same people making the same important decision about a matter of critical importance to their future.

In addition, continuing restrictions on the sale of regional corporation stock until a majority of the shareholders vote to opt out has another important benefit. The interrelationship between native and non-native culture and the pace of economic development varies from region to region. Consequently, the time best suited for a vote to terminate restrictions on the sale of regional corporation stock will also vary from region to region. The AFN opt out approach allows the shareholders of each regional corporation to decide for themselves based upon their own assessment of their own circumstances when the time to vote is right for them, and for that reason the regional corporation opt in approach in the Senate amendment was opposed by the delegates who attended the October, 1986, AFN convention.

The second reason the delegates who attended that convention opposed the Senate amendment was that the amendment made dissenters' rights mandatory rather than optional, allowing minority of shareholders to require that they be paid in full before a majority of the shareholders can take action to protect the land that is the Alaska native people's greatest heritage will prevent the majority from doing so.

I would like to just take a minute here and give you an example of this. NANA, the regional corporation in the northeast Arctic that is developing the Red Dog Mine is a typical example. Like most corporations, both village and regional, NANA is resource rich and cash poor. At present, there are 736,400 shares of NANA stock outstanding. After making the required Section 7(i) distribution, NANA estimates that over 30 years the corporation will earn \$300 million from the Red Dog mine. If only 10 percent of its shareholders voted against continuing the restrictions on the sale of NANA stock and had a mandatory right to be paid the value of their stock, even undiscounted that value would be \$30 million on

the Red Dog Mine alone, and that does not count the value of NANA's land or other non-cash assets.

Regardless of the optional payment methods that were included in the Senate Amendment, NANA simply cannot raise the cash to pay its dissenters, and the only way then to raise that money would be to sell the land. The granting or withholding of dissenters' rights must be made optional. Doing so enables shareholder to protect the benefits of the settlement for future generations, and it does so in a manner that does not discriminate against minority shareholders. If a majority of shareholders vote not to pay dissenters, dissenters remain members of the corporation with the same rights, benefits, and privileges as all other shareholders.

The third reason that the delegates who attended the October 1986 convention opposed the Senate amendment was that the delegates determined that the disclaimer at the end of the amendment was not sovereignty neutral. The questions of whether Alaskan natives who live in native villages are members of Federally recognized Indian tribes and if so, whether the Indian Reorganization Act councils, traditional native councils, or other governing bodies of the native villages possess and they legally exercise governmental authority has been the subject of considerable controversy in the State of Alaska, and for that reason, from the beginning of the 1991 effort, AFN has agreed that the 1991 legislation must be neutral on the native sovereignty question.

H.R. 4162 and H.R. 278 both accomplish this goal. However, we believe that the Senate Amendment tilted the scale and tipped the balance in favor of those who oppose the aspirations of native people to exercise self-government. As evidenced by the hearing record over the last year and a half, there is no question that the business corporation is not always well suited to the reality of life in many of the rural villages, and for that reason including a provision to assist village corporation shareholders to transfer title of village lands from the village corporation to another organization has been an important priority for AFN. However, it is not more important than ensuring that the rights of Alaska Natives who desire to exercise governmental authority over their lives, lands, and property are respected and protected, and for that reason the delegates who attended last year's AFN convention opposed the sovereignty disclaimer in last year's Senate amendment, and I might add that we will submit these before the end of the two-week period.

The concerns expressed by the delegates who attended the October convention identified the major policy considerations that we believe must be addressed and satisfactorily resolved before 1991 legislation can be enacted into law, and to expedite that process AFN has prepared a 1991 bill that combines concepts and technical language developed by the Congress and within the native community, and a copy of the AFN bill is attached to our written testimony, and I would respectfully request that it be printed in the hearing record.

Senator MURKOWSKI. It will entered into the record as requested.

Ms. LEASK. Thank you.

As mentioned in the Department of Interior's testimony and in conversations that we have had with the Secretary of Interior,

there is a fundamental difference in philosophy between AFN, the native community, and the Department of Interior. The AFN legislation emphasizes the rights of the group over those of individual shareholders consistent with our native culture. AFN believes that the individual rights are important but only to the extent that they do not jeopardize the continued health and survival of the group as a whole.

The past 10 years of Indian legislation has shown us that when native lands are parcelled out to individuals who are permitted to sell it and where it is subject to taxation it is quickly restored to non-native ownership. When those lands are held in communal ownership, they tend to remain in the hands of the tribe or the group. The Department of Interior should be familiar with the legacy of the Dawes Act and other examples of the United States Indian policy. We are working through the 1991 legislation to ensure that our lands that we received in 1971 remain in native ownership for our generations.

In closing, Mr. Chairman, on behalf of AFN I would hope that after reviewing the testimony presented at this hearing, the Subcommittee will develop an amendment to S. 1145 that resolves the problems identified by the delegates who attended last year's AFN convention by combining the best of all three bills, both the House, the Senate, and the AFN bill, in a manner in which AFN, the Alaska Congressional delegation, and the members of the Committee on Energy and Natural Resources can wholeheartedly support, and again on behalf of AFN I look forward to working with members of the committee, with you, Senator Murkowski, with Senator Stevens and your staffs to achieve this important goal.

Thank you.

[The prepared statement of Ms. Leask follows:]

TESTIMONY
OF
JANIE LEASK
PRESIDENT OF THE
ALASKA FEDERATION OF NATIVES
ON S. 1145 AND H.R. 278
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

MAY 19, 1987

Mr. Chairman, members of the subcommittee, my name is Janie Leask. I am president of the Alaska Federation of Natives (AFN). The AFN board of directors is composed of a representative of each of the thirteen regional corporations organized pursuant to the Alaska Native Claims Settlement Act (ANCSA), a representative of each of the twelve Native regional nonprofit associations that provide health, housing and related services to Alaska Natives in each geographic region described in section 7 (a) of ANCSA, and twelve representatives of village corporations and Indian Reorganization Act and traditional Native village councils. The totality of the over 60,000 Natives who reside in Alaska are shareholders of, or are represented by, AFN's member corporations, associations and villages.

On behalf of AFN, I would like to express our appreciation for the opportunity to testify today on H.R. 278 and S. 1145, bills popularly known as "1991 legislation."

The need for 1991 legislation and the effort AFN and its member corporations, associations and villages have expended to identify 1991-related problems and to develop a consensus within the Alaska Native community as to how the Congress might best resolve them has been previously presented to the subcommittee at hearings held in Alaska and Washington, D.C. during the 99th Congress¹ and I would like to incorporate AFN's testimony during those hearings into the record of this hearing by reference.

¹See Senate Hearing Nos. 1036 and 1072, 99th Cong., 2d Sess. (May 24 and 27, July 10 and August 4, 1986).

The procedural status of 1991 legislation is as follows. Although the House of Representatives passed a 1991 bill - H.R. 4162 - during the 99th Congress, despite the best efforts of all interested parties, the Senate was unable to consider H.R. 4162 or any other 1991 bill prior to adjournment.

At the beginning of the 100th Congress Congressman Don Young introduced H.R. 278, a bill whose text is identical to the text of H.R. 4162. In March the House of Representatives passed H.R. 278 without amendment. Although it deals with many important 1991 issues in a manner consistent with AFN's recommended approach, at a technical level portions of the text of H.R. 278 are outmoded.

Although its text is more current, S. 1145, the 1991 bill Senators Murkowski and Stevens introduced on May 6, 1987, also has problems. In large measure, the text of S. 1145 is identical to the text of an amendment to S. 2065 (the companion bill to H.R. 4162) that was discharged by the Committee on Energy and Natural Resources in the final days of the 99th Congress. Although the amendment improved upon the text of H.R. 4162 in a number of important respects, the amendment was disapproved by the delegates who attended the October 1986 AFN convention.

The delegates rejected the Senate amendment for three reasons.

First, the amendment allowed restrictions on the sale of regional corporation stock to lapse unless a corporation obtained an affirmative vote of its shareholders prior to 1991 to continue

the restrictions. From the beginning of the 1991 process, AFN and its member corporations have been adamant that village and regional corporation stock must remain inalienable until restrictions are purposefully and knowingly terminated by an affirmative vote of the shareholders. The so-called "opt-out" approach is the heart of AFN's 1991 effort. And for good reason. The decision to terminate restrictions on the sale of stock may be the most important decision the shareholders of ANCSA corporations will make in their lifetimes. Whatever they decide, their decision will profoundly affect the heritage they leave for future generations and the longterm protection of the land that is the Alaska Native people's greatest legacy and most sacred trust. For that reason, if error is made, AFN believes that it should be made on the side of continuing restrictions on the sale of stock. To allow restrictions to terminate through inaction or to force the shareholders of a corporation to make an irrevocable decision before they have had time to gather the facts and consider the consequences before deciding their collective fate would violate the spirit of ANCSA's commitment to Native self-determination.

In that regard, it is important to note that the Senate amendment accepted AFN's rationale and recommendation and included an "opt-out" approach for village corporation shareholders. What the amendment failed to consider when it rejected the AFN recommendation that regional corporation shareholders also be allowed to "opt-out" is that most regional

and village corporations have the same shareholders. The Calista Corporation is a good example. Most Calista shareholders live in one of fifty-six villages on the Yukon-Kuskokwim River delta. In addition to Calista stock, they also own stock in a village corporation. With respect to the decision to terminate restrictions on the sale of their stock, the shareholders of Sea Lion Corporation, the village corporation organized in Hooper Bay, an isolated village on the coast of the Bering Sea, are the same individuals who own stock in Calista Corporation. Why is a policy allowing Sea Lion Corporation shareholders to continue restrictions on the sale of their stock until they vote to "opt-out" acceptable while affording Calista Corporation shareholders the same opportunity is not? The answer, of course, is obvious. They are the same people making the same important decision about a matter of critical importance to their future.

In addition, continuing restrictions on the sale of regional corporation stock until a majority of the shareholders vote to "opt-out" has another important benefit. The interrelationship between Native and non-Native culture and the pace of economic development varies from region to region. Consequently, the time best suited for a vote to terminate restrictions on the sale of regional corporation stock will also vary region to region. CIRI shareholders, for example, many of whom no longer live in villages, may want to vote whether to terminate restrictions on the sale of their stock prior to 1991. However, the shareholders of Calista or Ahtna or NANA may want to wait a decade or a

generation. Just as it would be unfair to require CIRI shareholders to wait until the time is right for Calista, Ahtna or NANA shareholders to vote, it is similarly unfair to require Calista, Ahtna or NANA shareholders to vote when they do not wish to do so. The AFN "opt-out" approach allows the shareholders of each regional corporation to decide for themselves - based upon their own assessment of their own circumstances - when the time to vote is right for them. For that reason, the regional corporation "opt-in" approach in the Senate amendment was opposed by the delegates who attended the October 1986 AFN convention, and will continue to be opposed by the delegates at future AFN conventions.

The second reason the delegates who attended the October 1986 AFN convention opposed the 1986 Senate amendment was that the amendment made dissenters' rights mandatory rather than optional. Allowing a small minority of shareholders to require that they be paid in full before a majority of the shareholders can take action to protect the land that is the Alaska Native people's greatest heritage will prevent the majority from doing so.

NANA, the regional corporation in the northwest arctic that is developing the Red Dog mine, is a typical example. Like most corporations, both village and regional, NANA is resource rich and cash poor. At present there are 736,400 shares of NANA stock outstanding. After making the required section 7(i) distribution, NANA estimates that over 30 years the corporation

will earn \$ 300 million from the Red Dog mine. If only 10 percent of its shareholders voted against continuing the restrictions on the sale of NANA stock and had a mandatory right to be paid the value of their stock, even undiscounted, that value would be \$ 30 million on the Red Dog mine alone, not counting the value of NANA's land and other noncash assets. Regardless of the optional payment methods that were included in the Senate amendment, NANA simply cannot raise the cash to pay its dissenters.

The granting or withholding of dissenters' rights must be made optional. Doing so enables shareholders to protect the benefits of the claims settlement for future generations. And it does so in a manner that does not discriminate against minority shareholders. If a majority of shareholders vote not to pay dissenters, dissenters remain members of the corporation with the same rights, benefits and privileges as all other shareholders.

The third reason the delegates who attended the October 1986 AFN convention opposed the Senate amendment was that, after considering the matter, the delegates determined that the disclaimer at the end of the amendment was not sovereignty neutral. The questions of whether Alaska Natives who live in Native villages are members of federally recognized Indian tribes, and, if so, whether Indian Reorganization Act (IRA) councils, traditional Native councils or other governing bodies of Native villages possess and may legally exercise governmental authority have been the subject of considerable controversy in

Alaska. For that reason, from the beginning of the 1991 effort AFN has agreed that 1991 legislation must be neutral on the Native sovereignty question.

H.R. 4162 (and H.R. 278 passed by the House of Representative last March) accomplished this goal. However, the Senate amendment tilted the scale and tipped the balance in favor of those who oppose the aspirations of Native people to exercise powers of self-government.

Although the issue is complex, the controversy about the relationship of 1991 legislation to Native sovereignty centers on a disagreement as to whether the federal courts will be more or less likely to find that land conveyed to an ANCSA corporation is "Indian country" if the corporation conveys the land to an IRA or traditional Native council. Since all versions of the 1991 legislation contain a section that facilitates land transfers to "qualified transferee entities," a term that includes IRA and traditional Native councils, opponents of Native sovereignty argue that 1991 legislation is not sovereignty neutral unless it contains a disclaimer that prevents the federal courts from considering the fact that an IRA or traditional Native council owns legal title to ANCSA land. Supporters of Native sovereignty argue that since IRA and traditional Native councils are presently empowered to own ANCSA corporation lands - and that at least one does so - a disclaimer that nullifies the legal effect of a land transfer is not sovereignty neutral in that it removes a legal argument IRA and traditional Native councils were

entitled to make prior to the enactment of 1991 legislation into law.

The evidence in the hearing record is uncontroverted that the business corporation is not well adapted to the reality of life in many rural Native villages. For that reason, including a provision to assist village corporation shareholders to transfer title to village lands from their village corporation to another organization has been an important AFN priority. However, it is not more important than ensuring that the rights of Alaska Natives who aspire to exercise governmental authority over their lives, lands and property are respected and protected. For that reason, the delegates who attended the October 1986 AFN convention opposed the sovereignty disclaimer in the Senate amendment.

Although AFN has a number of technical comments to offer about 1991 legislation, the concerns expressed by the delegates who attended the October 1986 AFN convention identify the major policy considerations AFN believes must be addressed and satisfactorily resolved before 1991 legislation is enacted into law. To expedite that process, AFN has prepared a 1991 bill that combines concepts and technical language developed by the Congress and within the Native community. A copy of the AFN bill is attached to this testimony, and I would respectfully request that its text be printed in the hearing record in full.

As previously mentioned, the text of H.R. 278 is outmoded. Although it includes a number of technical improvements, in large

measure, the text of S. 1145 is drawn from the text of the Senate amendment that - for the reasons previously explained - was not approved by the delegates who attended the October 1986 AFN convention.

For that reason, Mr. Chairman, on behalf of AFN I would hope that after reviewing the testimony presented at this hearing, the subcommittee will develop an amendment to S. 1145 that resolves the problems identified by the delegates who attended the October 1986 AFN convention by combining the best of all three bills in a manner AFN, Alaska's congressional delegation and the members of the Committee on Energy and Natural Resources can wholeheartedly support.

On behalf of AFN I look forward to working with you and your staff and with Senators Murkowski and Stevens and their staffs to achieve this important goal.

Thank you.

HEARINGS BEFORE
THE ENERGY COMMITTEE
OF THE UNITED STATES SENATE
ON S.1145

ALASKA FEDERATION OF NATIVES
"1991" AMENDMENTS TO THE
ALASKA NATIVE CLAIMS SETTLEMENT ACT
May 19, 1987

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AMENDMENT IN THE NATURE OF A
SUBSTITUTE FOR S. _____ BY MR. _____

Strike all after the enacting clause and insert, in lieu thereof, the following:

That (a) this Act may be cited as the "Alaska Native Claims Settlement Act Amendments of 1987".

(b) Whenever, in this Act, an amendment is expressed in terms of an amendment to a section or provision, the reference shall be considered to be made to a section or provision of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.).

CONGRESSIONAL FINDINGS

Sec. 2. Congress finds and declares --

(a) the Alaska Native Claims Settlement Act (ANCSA) was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based upon aboriginal land claims in a manner consistent with the real economic and social needs of the Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) the corporate model adopted by ANCSA is frequently ill-adapted to the reality of life in many Alaska Native villages and to traditional Native cultural values;

(c) although Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation have delayed the implementation of the settlement and significantly diminished its value;

(d) providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that ANCSA be amended to --

(A) provide the stockholders of each Native Corporation an opportunity to implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including, but not limited to, an opportunity to decide the manner in which Alaska Natives born after December 18, 1971, should participate in the settlement and whether the business corporation is the most appropriate entity to hold legal title to lands conveyed in partial settlement of aboriginal claims; and

(B) continue restrictions on the transfer of stock of Native Corporations until such time as the stockholders of a corporation may vote to terminate such restrictions; and

(e) both ANCSA, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Commerce Clause to regulate Indian affairs.

NEW DEFINITIONS

Sec. 3. (a) Section 3 (43 U.S.C. 1602) is amended by adding the word "group" after the word "individual," in subsection (h); striking the word "and" at the end of subsection (k); and by striking the periods at the end of subsections (l) and (m) and inserting, in lieu thereof, semi-colons.

(b) Section 3 is further amended by adding the following new subsections:

"(n) 'Settlement Common Stock' means the stock of a Native corporation issued pursuant to section 7 which carries with it the rights and restrictions listed in section 7(h)(1); and

"(o) 'Replacement Common Stock' means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to Section 7(h)(2); and

"(p) 'descendant of a Native' means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity."

NEW STOCK ISSUANCES

Sec. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1)(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one-hundred shares of Settlement Common Stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to --

"(I) Natives born after December 18, 1971, or

"(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, for no

consideration or for such consideration as may be specified in the amendment to the articles of incorporation or in a resolution adopted by the Board of directors pursuant to authority expressly vested in the board by the amendment.

(III) Natives who have attained the age of sixty-five .

"(ii) No more than 100 shares of additional Settlement Common Stock may be issued to any one individual pursuant to subparagraph (1).

"(iii) A Regional Corporation may provide that upon the death of the Native to whom Settlement Common Stock was issued pursuant to subparagraph (i), such Settlement Common Stock (or stock issued in exchange for such Settlement Common Stock pursuant to section 7(h)(2)) shall be deemed canceled. No compensation for this canceled stock shall be paid to the estate of the deceased Native or to any person holding the stock.

"(C)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under applicable law) to holders of outstanding shares of Settlement Common Stock issued pursuant to subparagraphs (A) and (B),

"(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting

power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B),

"(2)(A) Notwithstanding any other provision of law and in addition to any other authority, a Regional Corporation may amend its articles of incorporation to authorize, in addition to the authorities provided in subparagraphs (1)(A), (1)(B), and (1)(C), the issuance of additional shares of stock in accordance with the provisions of this paragraph. Such amendment may provide that the preemptive right of stockholders under the laws of the State shall not apply to the issuance of such additional shares of stock. A Regional Corporation may establish one or more subsidiaries for the purposes of receiving shares of stock issued pursuant to this paragraph and subparagraph 7b(i) shall apply to the transfer of assets to such subsidiary.

"(B) The amendment authorized by subparagraph (A) may provide that the additional stock to be issued shall be one or more of the following --

"(i) divided into classes and series within classes with preferences, limitations, and relative rights, including, without limitation --

"(I) dividend rights,

"(II) voting rights, or

"(III) liquidation preferences;

"(ii) made subject to one or more of --

"(I) the restrictions on alienation described in clauses (i), (ii), (iv) and (vi)

of subsection (h)(1)(B) of this subsection,
and

"(II) the restriction described in
paragraph (1)(B)(iii), and

"(iii) restricted in issuance to --

"(I) Natives who have attained age
of sixty-five , or

"(II) another identifiable group of
Natives or descendants of Natives defined in
terms of general applicability and not in any
way by reference to place of residence or
family; or

"(III) the entities established for the
sole benefit of Natives or descendants of
Natives, including an identifiable group of
Natives or descendants of Natives defined in
terms of general applicability and not in any
way by reference to place of residence,
family, or position as an officer, director,
or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall
provide that the additional shares of stock shall be issued
--

"(i) as a dividend or other distribution (without
regard to surplus of the corporation under the laws of
the State) to all outstanding shares of stock of any
class or series, or

"(ii) for such consideration as may be permitted
by law (except that this requirement may be waived with

respect to issuance of stock authorized in subparagraph (B)(iii)),

"(D) During any period in which the restrictions imposed by subsection (h)(1)(B) on alienation of Settlement Common Stock of the Regional Corporation are in effect, no stock issuance authorized pursuant to subparagraph (A), shall be --

"(i) issued to a group of individuals composed only of employees, officers, or directors of the corporation, or

"(ii) issued more than thirteen months after the date on which the vote of the stockholder authorizing the issuance of such stock occurred if, as a result of the issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total shares entitled to vote for the board of directors.

"(3)(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2)(A) shall specify --

"(i) the maximum number of shares of any class or series of stock to be issued, and

"(ii) the maximum number of votes that may be held by such shares,

"(B) If an amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2)(A) permits the issuance of classes or series of stock which, when issued singly or in combination, may cause the outstanding shares of Settlement Common Stock to represent

less than a majority of the total voting power of the corporation for the purpose of electing directors, the stockholders of such corporation shall be expressly so advised in the proxy statement or other information material distributed in advance of their vote upon the amendment.

"(4)(A)(i) Unless authorized by the articles of incorporation, no shares of stock issued pursuant to paragraphs (1)(B), (1)(C), or (2) shall carry rights to share in distributions made to stockholders under subsections (j) and (m) of this section,

"(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall continue to apply the ratio last computed under subsection (m) before the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds under subsections (j) and (m) of this section.

"(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C) or (2) shall not affect the division and distribution of revenues under subsection (i) of this section.

"(C) No provisions of this Act shall limit the right of a Regional Corporation to take any action authorized under the laws of its jurisdiction of incorporation so long as such action is consistent with the provisions of this Act."

SETTLEMENT COMMON STOCK: RIGHTS: ALIENATION RESTRICTIONS

Sec. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

"(h)(1)(A) Except as otherwise provided herein and in paragraphs (3) and (4) of this subsection, Settlement Common Stock of a Regional Corporation issued shall --

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders;

"(ii) permit the holder to receive dividends or other distributions from the Regional Corporation; and

"(iii) vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska.

"(B) Until the termination of such restrictions by the stockholders under paragraph (2) of this subsection or pursuant to section 7a, Settlement Common Stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be --

"(i) sold;

"(ii) pledged;

"(iii) subject to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset under title 11 of the United States Code or any successor statute; or

"(vi) otherwise alienated.

"(C) The restrictions contained in subparagraph (B) of this paragraph shall not apply to transfers of Settlement Common Stock if such transfers are made to --

"(i) Natives or descendants of Natives --

"(I) pursuant to a court decree of separation, divorce or child support, or

"(II) by a stockholder who is a member of a professional organization, association, or board which limits the ability of that stockholder to practice his or her profession because of holding stock issued under this section; or

"(ii) a child, grandchild, niece or nephew of a stockholder as an inter vivos gift from such stockholder.

"(D) A transfer made pursuant to subparagraph (C)(ii) shall not subject the stockholder or his or her child, grandchild, niece or nephew to any form of federal, state or local taxation.

"(E) Except as provided in section 7a, the restrictions on alienation of Settlement Common Stock provided in this paragraph shall remain in effect until such time as the stockholders of a Regional Corporation vote to terminate such restrictions as provided in paragraph (2) of this subsection.

"(2)(A) Except as provided in subparagraph (F) of this paragraph, a Regional Corporation may terminate the restrictions on alienation imposed on its Settlement Common Stock by paragraph (1) of this subsection as provided in this paragraph.

"(B) At any time after the date of enactment of this paragraph, a resolution to terminate such restrictions may be adopted by the board of directors on its own motion or

pursuant to a stockholders' petition as provided in paragraph (6)(D) of this subsection. A resolution of the board of directors of a Regional Corporation to terminate such restrictions shall be submitted to a vote of the stockholders in accordance with the procedures set forth in paragraph (6) of this subsection.

"(C) A resolution to terminate restrictions adopted pursuant to this paragraph shall make provision for the time of termination, either by the establishment of the date certain or the description of a specific event upon which the restrictions shall terminate.

"(D)(i) The adoption of a resolution under this paragraph shall be considered to be an amendment to the articles of incorporation of the Regional Corporation for the purposes of paragraph (6) of this subsection. On the date of termination as established in such resolution, all Settlement Common Stock previously issued shall be deemed canceled and shares of stock of the appropriate class shall be issued to each holder of Settlement Common Stock, share for share, subject only to such restrictions as may be provided in an amendment to the articles of incorporation adopted pursuant to paragraph (7) of this subsection or in agreements between the corporation and the individual stockholders.

"(ii) Replacement Common Stock, if issued in exchange for Settlement Common Stock issued pursuant to subsection (g)(1)(B)(i) shall bear a legend indicating that the stock may eventually be canceled in accordance with the requirements of subsection (g)(1)(B)(iii).

"(iii) The board of directors of the corporation may approve a resolution to provide that each share of

Settlement Common Stock issued pursuant to subsection (g)(1)(A), and if authorized pursuant to (g)(4)(A)(i), Settlement Common Stock issued pursuant to subsections (g)(1)(B) and (g)(1)(C), to the class of stockholders who were not residents of villages in the region incorporated pursuant to this Act shall be exchanged either for --

"(I) a share of Replacement Common Stock that carries the right to share in distributions made to such stockholders under subsections (j) and (m) of this section, or

"(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iv) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in clause (iii)(II).

"(v) Replacement Common Stock issued under this paragraph shall not be subject to involuntary alienation based upon any asserted or unasserted legal obligation arising prior to the issuance of such stock.

"(E) The rejection of a resolution adopted pursuant to this paragraph by the stockholders of a Regional Corporation shall not preclude votes on subsequent resolutions adopted and submitted to a vote pursuant to this paragraph.

"(F) If the shareholders fail to adopt a resolution pursuant to this paragraph, the board of directors or shareholders by a petition, may resubmit the same question to the shareholders in a manner provided by this section no more frequently than annually, unless an amendment to the

articles of incorporation is adopted providing for a longer interval, not to exceed twenty years. An amendment providing a longer interval adopted pursuant to this paragraph may not be repealed by a subsequent vote of the shareholders.

"(G) Notwithstanding the provisions of this paragraph, if the board of directors of the Bristol Bay Native Corporation or any Village Corporation in the Bristol Bay region adopts, within one year of the date of enactment of this paragraph, a resolution electing to follow the procedures set forth in section 7a of this Act, the provisions of this paragraph shall not be applicable to such corporation.

"(3)(A) Upon the death of any holder of Settlement Common Stock, ownership of such stock shall be transferred in accordance with the last will and testament of such holder or under applicable laws of intestate succession, except that, in the event the deceased stockholder fails to dispose of all of his or her Settlement Common Stock by will and if such stockholder has no heirs under applicable laws of intestacy who are Natives or descendants of Natives, such Settlement Common Stock shall escheat to the appropriate Regional Corporation.

"(B) In the event that such stock would be transferred by devise or inheritance to a person not a Native or a descendant of a Native, the Regional Corporation shall have the right to purchase such stock for its fair market value within 90 days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs.

"(4) Settlement Common Stock transferred through inheritance to a person who is not a Native shall not carry voting rights. The lapse of the right to vote in a holder of Settlement Common Stock upon a transfer by inheritance or otherwise may be restored by the adoption of an amendment to the articles of incorporation, but only if such shares of stock are held by a Native or a descendant of a Native.

"(5)(A) Notwithstanding any provision of Alaska law, other than those which relate to proxy statements or solicitations which are not inconsistent with this paragraph, and except as provided in section 7a of this Act

--
 "(i) any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection or subsection (g) of this section;

"(ii) a transfer of assets made pursuant to section 7b;

"(iii) a resolution described in paragraph (B) of this paragraph;

shall be approved as provided in this paragraph.

"(B) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual, or a special, meeting of the stockholders. One or more such amendments or resolutions may be submitted to the stockholders and voted upon at one meeting.

"(C) A written or printed notice, setting forth the proposal or summary of the changes to be effected, or the proxy statement and related proxy material if required under

applicable law, shall be delivered by hand or sent by first class mail to each stockholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting at the address of such stockholder as it appears on the record of the corporation. The corporation may also communicate with its stockholders at any other time and in any manner permitted under the laws of the State of Alaska.

"(D) With respect to any amendment or resolution described in subparagraph (A) of this paragraph, if the holders of at least 15 per centum or, in the case of an amendment to terminate restrictions on the alienability of Settlement Common Stock, one-third of the outstanding shares of Settlement Common Stock entitled to be voted petition the board of directors to adopt and submit such amendment or resolution to the vote of the stockholders the board of directors shall adopt a resolution to that effect and submit it to the stockholders as provided in this paragraph. The procedural and disclosure requirements pertaining to the solicitation of proxies under State law shall govern solicitation of signatures on any such petition. If the petition meets the aforementioned standards and if --

"(i) the board of directors agrees with such petition, it shall submit the resolution and either the proponent's statement or its own statement in support of the resolution to the stockholders for a vote; or

"(ii) the board of directors disagrees with the petition for any reason, it shall submit the resolution and the proponent's statement to the stockholders and may, at its discretion, submit an opposing statement and/or an alternative resolution.

"(E)(i) Any amendment to the articles of incorporation that would have the effect of removing the restrictions on alienation of Settlement Common Stock provided in paragraph (i) of this subsection shall be approved if such amendment receives the affirmative vote of at least a majority of the outstanding shares of Settlement Common Stock entitled to vote on such amendment.

"(ii) Any other amendment or resolution described in subparagraph (A) of this paragraph shall be approved --

"(a) if voted upon by at least 51 per centum of the votes represented by the capital stock of the Regional Corporation entitled to be voted on such amendment or resolution; and

"(b) if such amendment or resolution receives the affirmative vote of at least a majority of all votes cast, subject to the right of the board of directors of the Regional Corporation to provide a quorum or vote requirement greater than subclause (a) or (b) of this clause, or both, and to the right of the Regional Corporation in its articles of incorporation to provide a vote by classes of stock for all or any of such actions.

"(F) If the result of a stockholder vote under this paragraph is the continuation of the restrictions against alienation of Settlement Common Stock, a stockholder who voted in favor of termination of the restriction may demand and receive payment from the corporation for all of his or her shares, but only if, contemporaneously with such vote the stockholders approve a resolution providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder shall be

followed, if such right is made available pursuant to this subparagraph.

"(G) A resolution adopted pursuant to subparagraph (F) of this paragraph may provide that Settlement Common Stock shall be valued as restricted stock, having the same restrictions for the same period made applicable to the stock by the vote, and/or,

"(i) the value of the land or any interest therein received by the corporation pursuant to this Act which --

"(I) is committed by the corporation to Native traditional or cultural uses; and/or

"(II) is of speculative or unknown value on the date such resolution is adopted;

shall be excluded by the stockholder, the corporation and any court in the determination of the fair market value of the shares of Settlement Common Stock to be purchased from such stockholders by the corporation.

"(H) A resolution adopted pursuant to subparagraph (F) of the paragraph may provide that payments made to each dissenting stockholder shall be made through the issuance to such stockholder of a non-negotiable note in the principal amount of the payment due, which note shall be secured either by --

"(i) a payment bond issued by an insurance company or financial institution;

"(ii) the deposit in escrow of securities or property having a fair market value equal to at least 125 per cent of the face amount of the note; or

"(iii) a lien upon the real property interests of the corporation valued at 125 per cent or more of the face amount of the note, other than lands or interests therein which are committed to Native traditional or cultural uses and, the percentage divisible interest in the corporation's timber resources and subsurface estate that exceeds its percentage interest in revenues from such property under section 7(i).

"(iv) Any note issued pursuant to this subsection shall provide that --

"(I) interest shall be paid semi-annually, beginning as of the date the corporation elected to extend stock restrictions on Settlement Common Stock or transfer assets pursuant to section 7b of this Act, at the rate applicable on such date to obligations of the United States having a maturity of one year; and

"(II) the principal amount and any undistributed interest shall be payable to the former stockholder or his or her heirs or devisees --

"(aa) at anytime, at the option of the corporation; or

"(bb) if not so called, on December 18, 1991, or, if the restrictions on Settlement Common Stock otherwise would have expired on a later date, on such date or five years after the date of election, whichever occurs first, or, if the transfer of assets occurs after December 18, 1991, then five years after the date of such transfer."

"(6) Notwithstanding a stockholder vote to terminate restrictions on alienation of Settlement Common Stock under paragraph (2) of this subsection or the expiration of such restrictions pursuant to section 7a, a Regional Corporation, prior to the effective date of such termination, may amend its articles of incorporation to impose any term, restriction, limitation or other provision upon the Replacement Common Stock issued pursuant to paragraph 2(D) of this subsection permitted under applicable law as well as restrictions providing for --

"(A) the denial of voting rights to any holder of such Replacement Common Stock who is not a Native or descendant of a Native; and

"(B) the granting to the corporation, or to the corporation and the stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's Replacement Common Stock prior to the sale or transfer of such stock, other than a transfer by inheritance, to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance.".

BRISTOL BAY REGION: SPECIAL PROVISIONS

Sec. 6. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"Sec. 7a. (a) If the Bristol Bay Native Corporation or any Village Corporation located in the Bristol Bay region adopts a resolution as provided in paragraph (2)(F) of subsection 7(h), such corporation may extend the restrictions on alienation of Settlement Common Stock as provided in this section.

"(b)(1) Within two years after the election under paragraph (2)(F) of section 7(h) and, if the quorum requirement specified in subsection (e) of this section is not satisfied, annually thereafter, the board of directors of such corporation shall adopt, and submit to a vote of its stockholders, a resolution to amend its articles of incorporation to extend the restrictions on alienation of its Settlement Common Stock.

"(2) Such resolution shall provide for an extension of the restrictions for a period of not less than twenty nor more than fifty years.

"(3) If a resolution under paragraph (1) of this subsection is adopted, such corporation may, prior to the expiration of the period of extension or any successor extension period, further extend the restriction under the provisions of this section.

"(c)(1) If any vote conducted pursuant to subsection (b) of this section is ineffective because of a continuing or repeated lack of quorum as provided in subsection (e) of this section or if the holders of Settlement Common Stock defeat a resolution to continue restrictions on alienation, the board of directors shall adopt, and submit to the vote of the stockholders, a resolution which establishes the date or describes the specific event upon which the restrictions shall terminate.

"(2) If no such resolution is voted upon and approved, the restrictions shall terminate one year from either the date of the vote disapproving the resolution to extend such restrictions or the last date on which a lack of a quorum existed, as the case may be, or on December 18, 1991, whichever date later occurs.

"(3) On the date of termination of such restrictions, all Settlement Common Stock of such corporation previously issued shall be deemed canceled and shares of Replacement Common Stock of the appropriate class shall be issued to each stockholder, share for share, subject only to such restrictions as may be provided by the articles of incorporation, including any amendment thereto adopted pursuant to section 7(h)(6) or in agreements between the corporation and individual stockholders.

"(d)(1) Notwithstanding any provision of Alaska law, except those relating to stockholders' rights of petition and to proxy statements and solicitations which are not inconsistent with the provisions of this section --

"(A) any amendment to the articles of incorporation of a corporation authorized by this section or subsection 7(g) and 7(h)(4),(5) and (7) of this Act;

"(B) a transfer of assets made pursuant to section 7b;

"(C) a resolution described in subsection (c) of this section; or

"(D) a resolution described in subsection (f)(2) of this section;

shall be approved as provided in this subsection.

"(2) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual, or a special, meeting of the stockholders. One or more such amendments or

resolutions may be submitted to the stockholders and voted upon at one meeting.

"(3) A written or printed notice setting forth the proposal or a summary of the changes to be effected shall be given to each stockholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting, either personally or by mail.

"(e)(1) In order for a resolution to be approved under this section, the proposal must be voted upon by at least 51 per centum of the outstanding shares of Settlement Common Stock entitled to be voted and must receive the affirmative vote of at least 50 per centum plus one of the shares voted.

"(2) Notwithstanding paragraph (1) of this subsection, the stockholders may require a minimum vote of more than 51 per centum of the outstanding shares of Settlement Common Stock entitled to be voted or an affirmative vote greater than 50 per centum of the shares voted, or both, to approve any such proposal.

"(f)(1) If the result of a stockholder vote under this subsection is the extension of restrictions against alienation or a transfer of assets pursuant to section 7b, a stockholder who voted against the extension or transfer may demand and receive from the corporation the fair market value of his or her shares. Unless longer periods of time are authorized in the bylaws of the corporation, the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed to the extent such right is made available pursuant to this subsection.

"(2) The stockholders of the corporation may adopt a resolution, concurrent with the vote authorized under subsection (a) of this section, which provides that, in the event dissenters' rights are exercised --

"(A) such shares shall be valued as restricted stock pursuant to paragraph 7(h)(5)(G), and/or

"(B) payment to dissenting stockholders shall be made through a non-negotiable note pursuant to paragraph 7(h)(5)(H)."

TRANSFER OF ASSETS: QUALIFIED TRANSFEREE ENTITY

Sec. 7. The Alaska Native Claims Settlement Act is further amended by adding the following new section:

"Sec. 7b. (a) Any Native Corporation, or the stockholders of a Native Corporation which has been dissolved involuntarily under applicable law, is hereby authorized to convey any or all of its assets, including the title to the surface or subsurface of land, to a qualified transferee entity as provided in this section.

"(b) The conveyance of such assets shall be as provided in a resolution, including a provision for the payment of consideration or no consideration as desired, adopted by the board of directors of such corporation and submitted to a vote of its stockholders as provided in section 7(h)(5) of the Alaska Native Claims Settlement Act, as amended, or section 7a of this Act, as the case may be.

"(c) An entity shall be qualified to accept a transfer of assets conveyed pursuant to this section if it --

"(1) is organized pursuant to, or recognized by, State or Federal law;

"(2) has a membership composed persons, a majority of whom are Natives or descendants of Natives whose interest in the entity is non-transferable;

"(3) provides membership for every person who holds Settlement Common Stock in the corporation making the transfer of assets on the date before the date of such transfer;

"(4) except as provided in paragraph (3), accepts as new members only Natives or descendants of Natives; and

"(5) Provided that the entity meets the other conditions of this paragraph, a qualified transferee entity may be established as a trust and such entity shall remain exempt from the provisions of the Investment Company Act of 1940(54 Stat. 789), the Securities Act of 1933(48 Stat. 74), the Securities Exchange Act of 1934 (48 Stat. 881), and Employees Retirement Income Security Act (88 Stat. 829), as amended, provided; that such entity is not established for or operate as a business which principal purpose is business operation for profit.

"(d) Notwithstanding any other provision of law, a qualified transferee entity is authorized to --

"(1) by a vote of its members,

"(A) limit its membership to Natives or descendants of Natives; and

"(B) admit to membership non-Natives only for the purpose of complying with

paragraph (3) of subsection (c) of this section;

"(2) distribute cash and other assets to its members, except that such entity shall not convey fee title to land or interests therein unless authorized or required by section 14(c) or 21(j) of this Act; and

"(3) reconvey land, or interests in land not subject to section 7(i), to any government agency on behalf of a traditional council or Indian Reorganization Act Council authorized by federal law to accept such conveyance or to a traditional council or Indian Reorganization Act Council, provided; that such transferee entity shall be governed by the membership requirements and authorizations of subparagraphs 7b(b);, 7b(c);, and 7b(d); and

"(4) exchange lands or interests therein pursuant to the provisions of section 22(f) of the Alaska Native Claims Settlement Act, as amended, and section 1302(h) of the Alaska National Interest Lands Conservation Act.

"(e) In addition to any other protection or immunity provided by other applicable law, the provisions of subsection (d) and (e) of section 21 shall continue to apply to any lands or interests herein conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

"(f)(1) Any revenues subject to distribution under section 7(i) derived from assets conveyed pursuant to this section shall remain subject to section 7(i) to the same extent such revenues would have been subject if the conveyance had not occurred.

"(2) A Regional Corporation shall not convey assets subject to section 7(i) to more than one qualified transferee entity. Prior to receiving a conveyance of an asset subject to section 7(i), a qualified transferee entity shall agree in writing --

"(A) to comply with section 7(i) and be bound by any valid agreement entered into by the transferor Regional Corporation or its successors.

"(B) to waive its sovereign immunity with respect to claims arising under section 7(i) or this subsection.

"(3) The Regional Corporation or, in the case of its dissolution, another single entity designated by its stockholders or the United States district court, as appropriate, shall be responsible for administering the provisions of section 7(i) with respect to assets subject to section 7(i) conveyed by such corporation pursuant to this section.

"(4) After the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall continue as security for the payment by such corporation or its successor entity of all revenues which the corporation is obligated to distribute to other Regional Corporations pursuant to section 7(i).

"(g)(1) If a resolution conveying assets is approved by a stockholder vote pursuant to subsection (b) of this section, any stockholder who voted against the resolution may demand and receive payment from the corporation for all of his or her shares, but only if, concurrent with such vote, the stockholders of the Native Corporation adopt a resolution expressly providing for such right.

"(2) The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this subsection.

"(3) For the purpose of this section, a resolution establishing dissenter's rights may provide that the Settlement Common Stock shall be valued on the basis set forth in section 7(h)(5)(G) and/or that the form of payment to dissenting stockholders shall be as provided in section 7(h)(5)(H)."

"(h)(1) Notwithstanding any other provisions of law, the provisions of the Alaska Native Claims Settlement Act, as amended, (including sections 14(c), 14(f), 14(g), 21(d), and 21(e) and section 907 of the Alaska National Interest Lands Conservation Act of 1980 (43 U.S.C 1636)) shall continue to apply to any land, or interest in land, conveyed to a qualified transferee entity as if the land, or interest in land, were still held by the Native Corporation that conveyed the land, or interest in land, pursuant to subsection (a). The provisions are in addition to any other protections or immunities provided by other applicable law.

"(2) Notwithstanding any other provision of law, the conveyance of any assets pursuant to subsection (a) to a qualified transferee entity shall not affect the applicability or enforcement (including specific enforcement) of any valid contract, judgment, lien, or other obligation (including an obligation arising under section 7(i)) to which such assets were expressly subject immediately before such conveyance.

"(3)(A) A claim made under paragraphs (1) and (2) shall be enforceable against the qualified transferee entity holding the land, interest in land, or other assets in question.

"(B) The sovereign immunity of a qualified transferee entity shall be deemed waived for purposes of allowing the enforcement of a claim pursuant to subparagraph (A).

"(i)(1) If a Native Corporation conveys assets or stock

--

(A) to a qualified transferee entity pursuant to this section; or

(B) to a partnership, corporation, trust, or other entity pursuant to other law and immediately following the completion of the conveyance, the partnership, corporation, trust or other entity is wholly owned by the corporation or its stockholders, or by both the corporation and its stockholders or by trustees for the benefit of beneficiaries whose interest arose from a Settlement Common Stock issuance pursuant to subparagraphs 7(g)(1)(A), 7(g)(1)(B), or 7(g)(1)(C);

neither the conveyance of the assets or stock, the receipt of the assets or stock, nor the distribution of stock nor other beneficial interests in the qualified transferee entity (or partnership, corporation, trust, or other entity) receiving the assets or stock to the stockholders of the corporation as part of the conveyance shall subject the corporation, its stockholders, or the qualified transferee entity (or partnership, corporation, trust, or other entity) accepting the conveyance to any form of federal, state, or

local taxation with respect to such conveyance, receipt, or distribution.

"(2) The basis to the qualified transferee entity (or partnership, corporation, or other entity), accepting a conveyance of any asset or stock conveyed pursuant to this section (or other law) shall be the same as it would be in the hands of the Native Corporation making the conveyance.

(3) Sections 21(c) and 21(d) shall continue to apply to any asset conveyed to a partnership, corporation, or other entity, which on the date of such conveyance is wholly owned by the corporation or its stockholders or by both the corporation and its stockholders, to the same extent that such sections applied to such asset when held by the corporation.

DISCLAIMER: TRIBAL GOVERNMENT

Sec. 8. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"Sec. 7c. No provision of the Alaska Native Claims Settlement Act Amendments of 1987 shall be construed as enlarging or diminishing or in any way affecting the scope of any existing governmental immunities or other powers of an Alaska Native village entity, including entities organized under the Act of June 18, 1934 (48 Stat. 987) as amended or Traditional Councils."

APPLICATION OF SECTION 7a TO CERTAIN VILLAGES

Sec. 9. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"Sec. 7d. The Aleut Corporation, Cook Inlet Region, Inc., and Koniag, Inc., and any Village Corporation within

the Aleut and Cook Inlet regions may, by a vote of its board of directors within one year after the effective date of this section, elect to comply with the provision of section 7a with respect to a stockholder vote on the question of whether to continue restrictions on alienation of Settlement Common Stock imposed by paragraph (1) of section 7(h) beyond December 18, 1991."

VILLAGE AND URBAN CORPORATIONS: NATIVE GROUPS

Sec. 10. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

"(c)(1) The provisions of subsections (g), (h), and (o) of section 7 and of section 7b of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native groups, except that --

"(A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and

"(B) subject to the provisions of paragraph (2) of this subsection and section 7 of this Act, restrictions on the alienation of Settlement Common Stock of such corporations, inchoate rights thereto, and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

"(2) The restrictions on alienation of Settlement Common Stock of Village Corporations, Urban Corporations and incorporated Native groups may be terminated or extended by the adoption of an amendment to their articles of incorporation to such effect pursuant to the provisions of

paragraphs (2) and (6) of subsection 7(h) or of section 7a, as the case may be, except that --

"(A) with respect to action under section 7(h), only one such vote may be held prior to December 18, 1991 and pursuant to section 7(h)(2)(F)7(h)(2)(F) annually thereafter; and

"(B) with respect to action under section 7a, votes shall be held as provided in section (b)(1) of section 7a."

CONSTITUTIONALITY: UNITED STATES JURISDICTION

Sec. 11. Section 10 (43 U.S.C. 1609) is amended by adding the following new subsection:

"(c)(1) Notwithstanding any other provisions of law, a civil action to contest the constitutionality of any amendment made by, or other provision of, this Act (the Alaska Native Claims Settlement Act Amendments of 1987) shall be barred unless--

(A) if the civil action challenges--

(I) the issuance or distribution of Settlement Common Stock for less than fair market value consideration pursuant to section 7(g)(1)(B) or 7(g)(2)(C)(ii) of the Alaska Native Claims Settlement Act of 1971, as amended;

(II) a failure to provide the right to demand and receive payment for Settlement Common Stock pursuant to section 7(h)(5)(F) for those shareholders who voted in favor of a termination of restrictions on alienation pursuant to section 7(h)(2)(A);

(III) the conveyance of assets to a qualified transferee entity for less than fair market value consideration pursuant to section 7b of the Alaska Native Claims Settlement Act of 1971, as amended;

the civil action is filed within 6 months of the date of the shareholder vote authorizing the challenged action and a request for a declaratory judgment or injunctive relief is made before the Native Corporation taking the challenged action issues stock or conveys assets; or

(B) with respect to any other civil action, the civil action is filed within two years of the date of the enactment of this Act.

(2) Notwithstanding any other provision of this Act, no Native Corporation taking an action described in paragraphs (1)(A)(i), (1)(A)(ii), or (1)(A)(iii) shall issue stock or convey assets within 14 days of the date of the shareholder vote authorizing such action.

(3) The United States District Court for the District of Alaska shall have exclusive original jurisdiction over any such action. The action shall be heard and determined by a court of three judges as provided in section 2284 of title 28 of the United States Code. Any appeal of the final judgment in the action shall be made directly to the United States Supreme Court.

(4) The purpose of the limitation on legal challenges to this Act outlined in subsection (a) is--

(A) to ensure that after the expiration of a reasonable period of time, Native shareholders and their corporations, the United States, and the State and its political subdivisions will be able to plan

their affairs with certainty in full reliance on the provisions of this Act, and

(B) without infringing on the constitutional rights of any individual, to minimize the possibility that the United States will incur a monetary liability as a result of the enactment of this Act.

(5) Notwithstanding any provision of this Act, in any civil action challenging an amendment authorized by section 7(h)(2)(A), the court is authorized to issue an order extending the restrictions imposed by section 7(h)(1)(B) on alienation of Settlement Common Stock during the pendency of the action and for a reasonable period thereafter sufficient to allow the rejection or approval of the proposed amendment by the shareholders of the Native Corporation involved. In determining whether to issue such order, the court shall consider the irreparable damage that may occur if such restrictions are terminated.

REAL PROPERTY INTERESTS: IMMUNITIES

Sec. 12. Paragraph (1) of subsection 21(d) (43 U.S.C. 1620(d)(1)) is amended to read as follows:

"(1)(A) Notwithstanding any other provision of law, all land and interests therein conveyed pursuant to the Alaska Native Claims Settlement Act, as amended, to any Native individual, Native group, Village or Regional Corporation, a corporation established pursuant to section 14(h)(3), or to a qualified transferee entity, shall be exempt, so long as such land and interests therein are not developed (or leased or sold to third parties), from --

"(i) adverse possession and similar claims based upon legal theories of estoppel;

"(ii) real property taxes by any governmental entity;

"(iii) judgment resulting from any claim based upon or arising under title 11 of the United States Code (or any successor statute), other insolvency or moratorium laws, or other laws affecting creditors' rights generally;

"(iv) judgments in any action at law or in equity to recover sums owed or penalties incurred by any Native Corporation or qualified transferee entity or any employee, officer, director, or stockholder or such corporation or entity, unless this exemption is waived in a valid and binding contract executed prior to the commencement of such action; and

"(v) involuntary distribution or conveyance related to the involuntary dissolution of the Native Corporation.

"(2) DEFINITIONS. -- (A) For purposes of this paragraph, the term --

"(i) 'Developed' means a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification. Surveying, construction of roads, providing utilities, or other similar actions, which are normally considered to be component parts of the development process but do not create the condition described in the preceding sentence, shall not constitute a developed state within the meaning of this clause. In order to terminate the exemptions listed in paragraph (1), land, or an interest in land, must be

developed for purposes other than exploration, and the exemptions will be terminated only with respect to the smallest practicable tract actually used in the developed state;

"(ii) 'Exploration' means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources; and

"(iii) 'Lease' means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor. With respect to a lease that conveys rights of exploration and development, the exemptions listed in paragraph (1) shall continue with respect to the leased tract so long as it is used solely for the purposes of exploration.

"(B) For the purposes of this subsection --

"(i) land shall not be considered developed solely as a result of --

"(I) the construction, installation or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist or otherwise further subsistence or other customary or traditional uses of such land; and

"(II) the receipt by the holder of the land of fees related to hunting, fishing, and guiding activities conducted on such land;

"(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such

land is integrally related to the timber harvesting operation.

"(3) ACTION BY A TRUSTEE. -- (A) Except as provided in this paragraph and in section 14(c)(3) of the Alaska Native Claims Settlement Act, as amended, no trustee, receiver, or custodian vested under applicable Federal or State law with a right, title, or interest of a Native Corporation or qualified transferee entity may --

"(i) assign or lease to a third party,

"(ii) commence development or use of, or

"(iii) convey to a third party,

any right, title, or interest in any land, or interests in land, subject to paragraph (1).

"(B) The prohibitions of subparagraph (A) shall not apply --

"(i) when actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity arising from any claim under section 7(i) or section 14(c) of Alaska Native Claims Settlement Act, as amended,

"(ii) to any land, or interests in land, which, prior to the vesting of the trustee, receiver, or custodian, have been developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation or qualified transferee entity; or

"(iii) to any land, or interest in land, which has been specifically and validly pledged as security for

any loan or specifically committed to a commercial transaction in a valid and binding contract.

"(4) EXCLUSIONS. -- (A) Except as otherwise provided in section 21(d) of the Alaska Native Claims Settlement Act, as amended, the exemptions provided by paragraph (1) shall not apply to any land, or interest in land, which is --

"(i) developed (or leased or sold to a third party); or

"(ii) held by a Native Corporation in which the shares of Settlement Common Stock held by Natives or descendants of Natives represent less than a majority of the total outstanding shares entitled to vote for the board of directors.

"(B) The exemptions provided in paragraphs (1)(A)(iii), (1)(A)(iv), and (1)(A)(v) shall not apply to any land, or interest in land --

"(i) if, and for so long as, such land or interest in land, is specifically and validly pledged as security for any loan or specifically committed to any commercial transaction in a valid and binding contract, and

"(ii) to the extent necessary to enforce a judgment in any action at law or in equity arising out of any claim under section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act, as amended.

"(C) If the exemptions listed in paragraph (1) are terminated with respect to land, or an interest in land, as a result of development (or a lease to a third party), and such land, or interest in land, subsequently reverts to an

undeveloped state (or the third-party lease is terminated), then the exemptions shall again apply to such land, or interest in land, in accordance with the provisions of this subsection.

"(5) SAVINGS. -- Nothing in this subsection shall be construed to impair or otherwise affect in any manner, any valid and binding contract that was entered into prior to the date of the Alaska Native Claims Settlement Act Amendments of 1987.

"(6) STATE JURISDICTION. -- Except as expressly provided in subsection (d), nothing in this section shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska."

CONFORMING AMENDMENT: SECTION 21

Section 13. Subsection (f) of section 21 (43 U.S.C. 1620(f)) is amended by striking the phrase "Until January 1, 1992" and inserting, in lieu thereof, the phrase "Until such time as the limitations upon alienation of Settlement Common Stock have been removed pursuant to section 7(h)(2) or have expired pursuant to section 7a of this Act."

SEVERABILITY CLAUSE

Sec. 14. Section 27 (85 Stat. 688) is amended to read as follows:

"Sec. 27. The provisions of this Act, as amended, are severable and, if any provision of the Act is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision."

CORPORATIONS EXEMPT FROM SECURITIES LAWS

ALASKA FEDERATION OF NATIVES:
MAY 19, 1987

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Sec. 15. Section 28 (43 U.S.C. 1625) is amended to read as follows:

"Sec. 28. (a)(1) Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through the earlier of the date after --

"(A) the date on which the corporation issues any shares of stock where the transaction or the stock is not exempt and which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives; or

"(B) the date on which the corporation removes the limitations on alienation of Settlement Common Stock as provided for in section 7(h)(2) or the date on which such restrictions terminate pursuant to section 7a of this Act.

"(2) Nothing in this section shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts.

"(b)(1) Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act.

"(2) For the purposes of determining the applicability of the registration requirements of the Securities Exchange Act of 1934 after the date determined pursuant to subsection (a) of this section, holders of Settlement Common Stock shall be excluded from the calculation of the number of stockholder of record pursuant to section 12(g) of that Act.

(c) The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this Act prior to January 1, 2001."

ELIGIBILITY FOR FEDERAL PROGRAMS

Sec. 16. Eligibility for Government Programs Section 29 (43 U.S.C. 1626) is amended by adding the following new subsection:

"(c) In determining the eligibility of any household or individual Native or descendant of a Native --

"(1) to participate in the Food Stamp program,

"(2) receive assistance under the Social Security Act; or

"(3) receive financial assistance or benefits under any other Federal or Federally assisted program otherwise available to the Native people of Alaska as citizens of the United States and of the State of Alaska,

any compensation (including in-kind or cash dividends on stock received from a Native Corporation to the extent that such dividends do not, in aggregate, exceed \$2,000 per individual per annum), remuneration, revenue, stock (including stock issued by a Native Corporation as a dividend or distribution on stock), land, or interest in

land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock), or other benefits received by such individual, such household, or any member of such household under the Alaska Native Claims Settlement Act, as amended, shall not be taken into account, regardless of whether such compensation, stock, land or interest in land, or other benefit is subject to Federal, State or local taxation.

"(d) Notwithstanding any other provision of law, including this Act, Alaska Natives shall remain eligible for all federal Indian programs on the same basis as other Native Americans."

CONFORMING AMENDMENT: SECTION 30

Sec. 17. Subsection (b) of section 30 (43 U.S.C. 1627(b)) is amended by striking the phrase "prior to December 19, 1991" and inserting, in lieu thereof the phrase "while the Native common stock of all corporations subject to merger or consolidation remain subject to restraints on alienation."

OTHER AMENDMENTS

Section 18. Paragraph (r) of section 7 (43 U.S.C. 1606(r)) is amended by adding the following subsections:

"(r) Notwithstanding any other provision of law, Native Corporations established pursuant to sections 7(d), 8(a), 14(h)(2), 14(h)(3) or pursuant to this Act, or their subsidiary corporations, partnerships, joint ventures, or affiliates in which a Native Corporation owns not less than 25 per centum of the equity, shall be within the class defined in 42 U.S.C. 2000-e(b) or its successors for the purposes of implementation of the 1964 Civil Rights Act (42 U.S.C 2000 et seq.), and

shall be considered within that same class for the purposes of implementing any other Federal non-jurisdictional statute which confers a benefit to Indians or Indian Tribes because of their relationship to the Federal government. Lands owned by Corporations established pursuant to Section 7(d), 8(a), 14(h)(2) or 14(h)(3) or pursuant to this Act shall be within the class defined by 42 U.S.C. 2000(e)-2(i) for the purposes of implementation of the 1964 Civil Rights Act (42 U.S.C 2000 et seq.).

"(b) Paragraph (s) of section 7 (43 U.S.C. 1606(s)) is amended by adding the following subsections:

"(s) For all purposes of Federal law, a Native Corporation, partnership or entity shall be considered to be a corporation owned and controlled by Natives if --

"(1) the shares of Settlement Common Stock held by Natives or descendants of Natives entitled to vote for the board of directors represents 50 per centum or more of the outstanding shares of the Native Corporation; or

"(2) the shares of stock held by Natives or descendants of Natives entitled to vote for the board of directors or other governing entity represents 50 per centum or more of the outstanding shares or voting power of the corporation, partnership or entity.

"(c) Paragraph (m) of section 22 (43 U.S.C. 1621(m)) is amended by adding the following subsection:

"(m) For purposes of the Federal Oil and Gas Royalty Management Act of 1982, as long as land, or interests in land, received pursuant to this Act by a Regional Corporation are, or have been, administered by

the United States pursuant to section 14(g), such land, and interests in land, shall be within the class defined in section 3(3) of the Federal Oil and Gas Royalty Management Act of 1982, and the Regional Corporation shall be within the class defined in section 3(4) of such Act.

"(d) Section 21 (43 U.S.C. 1620(j)) is amended to read as follows :

"(j) A real property interest distributed prior to the December 18, 1991, by a Village Corporation, Urban Corporation or Regional Corporation to a shareholder of such Corporation pursuant to a program to provide homesites to such stockholder, shall be deemed conveyed and received pursuant to this Act: Provided, That --

"(1) the land received is restricted by covenant for a period not less than ten (10) years to single family (including traditional extended family customs) residential occupancy, and by such other covenants and retained interest as such Corporation deems appropriate;

"(2) the land conveyed does not exceed one-and-one-half (1-1/2) acres;

"(3) the stockholder receiving the homesite, if the shareholder subdivides the land received, shall pay all Federal, tribal, State and local taxes which would have been incurred but for this subsection, together with simple interest at 6 per centum per annum calculated from the date of receipt of the land to be paid to the appropriate taxing authority;

"(4) provision of road access or provision of water and sewer facilities by such Corporation or shareholder shall not be taxed or assessed by an Federal, tribal, State or local taxing authority;

"(5) the receipt of conveyance, ownership or use of the land conveyed to a shareholder pursuant to this section shall not be taxed or assessed by any federal, tribal, state or local taxing authority nor shall the receipt and benefit of the conveyed land be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

"(e) Paragraph (a) of Section 21 (43 U.S.C. 1620(a) is renumbered section 21(a)(1), and the following subsections are added:

"(2) Subsection (1) shall apply to any individual Native receiving Alaska Native Fund distribution for so long as the distributing Regional Corporation maintains a balance of undistributed revenues.

"(3) For purposes of subsection (2), 'undistributed revenues' means any Alaska Native Fund revenues received by a Regional Corporation which have not yet been distributed to individual Natives through dividend distributions or in any other manner. The balance of undistributed revenues shall be reduced in like amount for any distribution to individual Natives."

"(f) Paragraph (t) of section 7 (43 U.S.C. 1606(t)) is amended by adding the following subsections:

"(t)(1) Nothing in the antitrust laws shall forbid the existence and operation of joint ventures or other

joint activity undertaken between or among any two or more corporations eligible under section 1627 to merge or consolidate. Such activity shall not, solely because undertaken by two or more such corporations rather than by a single merged or consolidated corporation, violate the antitrust laws.

"(2) Nothing in the antitrust laws shall forbid activities undertaken by regional corporations pursuant to Section 1606(i) and (q).

"(3) Any person or entity bringing an action under the antitrust laws for injuries caused by conduct undertaken pursuant to this Act is limited to recovery of actual damages. The action must be commenced no later than four years after the cause of action accrues. A corporation organized pursuant to this Act which successfully defends against such an action is entitled to costs and reasonable attorney's fees."

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Senator MURKOWSKI. Thank you very much, Janie Leask.

I am going to withhold questions until the panel has completed its presentation. The next witness on my list is Jonathan Soloman, vice president, Tanana Chiefs Conference.

Good morning. We welcome your statement.

STATEMENT OF JONATHAN SOLOMAN, VICE PRESIDENT, TANANA CHIEFS CONFERENCE, INC.

Mr. SOLOMAN. Good morning, Mr. Chairman. Thank you. My name is Jonathan Soloman. I am vice president of Tanana Chiefs. I will be filling in for the president of Tanana Chiefs, Mitch Demientieff. He had to fly out of here because of a death in the family.

Senator MURKOWSKI. I am sorry to hear that.

Mr. SOLOMAN. Mr. Chairman, the Tanana Chiefs Conference executive board of directors supports the AFN ANC bill that was negotiated between these two parties, because last year we were told that we had to come back with a united front. Mr. Chairman, the board of the Tanana Chiefs Conference is very upset with the Alaska delegation for not introducing the AFN bill, AFN and ANC bill, the bill to work on this year. But the Tanana Chief Conference will be looking for someone to introduce that AFN-ANC bill.

Mr. Chairman, we have a number of problems with S. 1145's procedure of abusive protection. One is the opting for regional corporations. Number Two is the ability to raise voting standards to two-thirds. The other is the mandatory dissenters' rights.

The Tanana Chiefs Conference supports the AFN bill on the QTE and disclaimer. One is the ability to put land in trust with the Secretary and silent it on the commendation and taxation, and third is keeping other Federal and State protection, but Mr. Chairman, we would be willing to meet and talk on these items with the Alaska delegation, and furthermore, Mr. Chairman, the Tanana Chief Conference board of directors at their annual meeting supported and demanded that a vote be taken by the Alaska people, Alaska shareholders if AFN bill is not used. And Mr. Chairman, the board of directors, the board of the Tanana Chief Conference asks that it is the consensus of, it is the desire of the Alaska delegation to deny sovereignty to the Alaska native, that they say so directly, and put in the bill that you we are denied the sovereignty rights of our forefathers.

Thank you.

[The prepared statement of Mr. Demientieff follows:]

STATEMENT
OF THE
TANANA CHIEFS CONFERENCE, INC.

BY

MITCH DEMIENTIEFF
President

ON

AMENDMENTS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT
H.R. 278 AND S. 1145

BEFORE THE

UNITED STATES SENATE
ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

May 19, 1987

Mr. Chairman and Members of the Committee:

Tanana Chiefs Conference, Inc. (TCC) is the regional Native nonprofit corporation for the Interior of Alaska, and is composed of the 43 Interior Athabascan Indian tribes which make up the Tanana Chiefs/Doyon region. TCC represented the region during the original claims settlement process, and we are glad to be here today to comment on these amendments.

I am very pleased today to join with the Alaska Federation of Natives (AFN) and the Alaska Native Coalition (ANC) to voice our support for the draft bill submitted with the AFN testimony.

Two bills have been filed which seek to solve what are commonly called the "1991" problem facing Alaska Natives. We believe that the joint AFN-ANC draft legislation is an accurate expression of legislation which truly reflects the needs and desires of Alaska Natives. Conceptually, the bill reflects the approach contained in H.R.278, but contains some technical refinements contained in S. 1145.

Since we have previously testified on the need for this legislation and our policy concerns, we will confine our remarks today to analysis of the bills currently before the committee.

H.R. 278

The joint AFN-ANC and H.R.278 differ in nine (9) significant respects, these include:

1. Allowing an option that stock issued to Natives born after 1971 to be life estate;
2. Allowing inter vivos transfer of restricted stock to children without tax recognition;
3. Allow corporations to repurchase stock from non-Native heirs;

4. Removes option to transfer of subsurface estates to villages;
5. Use of S.1145 definition of "developed", except for remaining silent on subdivisions.
6. Limits consideration of amendments to terminate restrictions to once a year unless further limitations up to 20 years are selected by the shareholders.
7. Deletes "if any" language from disclaimer clause;
8. Changes Q.T.E. section to allow reconveyance of land to Secretary of Interior in trust, retains protection which may exist under other federal/state laws; and clarifies that transfers to wholly-owned subsidiaries are tax free; and,
9. Remains silent on ability of State to condemn ANCSA or Q.T.E. lands.

In considering H.R.278, we would request the subcommittee to incorporate AFN's proposed changes which we view as technically better and incorporate the above nine points.

S.1145

The first five of the above concerns are essentially incorporated in S. 1145. The remaining four AFN additions to the House bill are not included in S.1145. Specifically, TCC has noted 48 differences between the joint AFN-ANC proposal and S.1145. Some of these we view favorably, while many are objectionable. The following is a section-by-section analysis of TCC's position on S.1145.

Sec. 2 - Legislative findings - This section does not accurately reflect the facts regarding the effect of ANCSA on Alaska Natives. Congress originally mandated that the Department of the Interior submit a report to Congress in 1985 to assist Congress in

evaluating ANCSA prior to 1991, when several restrictions would be lifted. The Department conducted the study, but has not released it to Congress. That study documents that ANCSA has not been a success. Like all human endeavors, ANCSA has had limited success, but more corporations (both regional and village) are in serious economic trouble than have been successful. Moreover, the relative improvements in the conditions of Alaska Natives since 1971 owe more directly to a variety of Federal health, housing, social and community development programs than to ANCSA, which has had only a marginal impact on the economic life of rural Alaska. The legislative findings contained in H.R.278 are based upon that draft 1985 study, and more accurately reflect Alaskan Native conditions.

These findings are important, since they define the needs of this legislation. While we recognize that ANCSA has significantly helped a minority of Native people, it has also resulted in large problems for all Natives. Serious fundamental reform of ANCSA is needed to avoid the clear and present dangers facing Native people. While H.R.278 and the AFN-ANC proposal propose the needed fundamental reform, the basic approach of S falls short of such needed reform, and that is basically a difference in perceptions between the sponsors. The simple fact is that the perceptions contained in the findings of H.R.278 are supportable by the 1985 report and other socioeconomic data, while those expressed in S.1145 lack creditable basis in fact. We urge the Committee to examine the facts and adopt the more appropriate legislative findings.

Sec. 3 - This is essentially consistent with the AFN-ANC position.

Sec 4 - The treatment of Native elders under S.1145 differs from the AFN-ANC position. Essentially, Native elders cannot be issued additional settlement common stock, under S . , which was a primary goal of the 1991 effort. Additional Native elder stock would be issued under the "other stock" provisions. This means that under Sec. 7(g)(2)(C), elders would have to purchase additional shares. This simply frustrates the intent of the provision

which is to allow elders differential benefits. This may be corrected by changing the term "(B)(iii)(III)" to (B)(iii)". Additionally, such stock does not have the full range of restrictions available with Settlement common stock. See subsection (g)(2)(B)(ii). It is our intent that elders should be protected the most.

(b) Other Stock Issues - Additionally, there appear to be two typo's in this section. Subsection (g)(2)(B)(iii)(II) seems to inadvertently omit reference to "descendants of Natives", which was proposed by AFN-ANC and would be consistent with the following subsection. Also in subsection (g)(2)(C)(ii), it is unclear as to whether "other stock" may be issued for less than fair market value. As currently written, it is unclear. Fair market value should be required unless issuance is restricted under (B)(iii).

Finally, the AFN-ANC proposal allows the option for stock under this section to participate in 7(j) and (m) distributions. We feel that this should be optional, and that the language "unless otherwise provided by amendment to the articles of incorporation", should be inserted at the beginning of subsection (g)(4)(A)(i).

Sec. 5 (a) Inheritance - Under the House and AFN-ANC proposal, stock may only be inherited by non-Natives through a will and would be subject to repurchase by the corporation. If there are no Native heirs through intestacy, the stock escheats to the corporation or is cancelled. S1145 allows non-Natives to inherit by intestacy and requires an amendment to the articles of incorporation to authorize corporation repurchase. This is a significant problem, since in one region, one-quarter of all inherited stock is passing to non-Natives by intestacy. Clearly, if a shareholder has an express desire to pass stock to a non-Native, then he/she should be allowed to do so if there is an express and clear intent memorialized by a will. Otherwise, the policy of retaining Native ownership and control of the corporation should have overriding consideration if this settlement is to remain truly a Native settlement. In any case, the automatic right to repurchase stock

should be created to avoid the costly amendment process for such an innocuous issue.

Non-Native inheritance by will does raise another issue with regard to the increasing recognition of contract wills. The trend in probate law seems to be to enforce will provisions intended to implement a contract obligation. Inheritance by non-Native descendants of Natives may serve some legitimate policy concerns, however, where a devise is made to fulfill a contract obligation, the "inheritance" is merely an alienation of an interest contrary to the intent of the Act to provide protective restrictions. We therefore propose that only "descendants of Natives" who are non-Native should be allowed to inherit. Such a provision would avoid abusive use of contract wills.

Sec. 6 Stock Buy Back - This section of S1145 is a substantial improvement over the AFN-ANC draft, and TCC supports the proposed language. Specifically, the section clarifies that repurchase is on a "willing seller" basis. Additionally, repurchased stock is cancelled, and may not be treated as treasury stock. This would prohibit reissue of such stock. Additionally, the section requires disclosure of the exclusion of land value. TCC strongly supports this language as alternative language to the AFN-ANC draft because it will reduce the possibility of abuse.

Sec. 7 - Section 7 is in essential agreement with AFN-ANC and TCC position.

Sec. 8 Voting Procedures - This section of S1145 raises many concerns. As a technical matter, the coverage subsection omits reference to Sec. 8(c) (elections by village corporations). This should be included.

A number of provisions of this section are designed to create procedural barriers to corporations from taking advantage of the protections offered under this Act. The whole purpose of this bill is to extend protections to preserve the Settlement for Natives.

It is simply deceptive to enact legislation creating such protections and including new barriers designed to frustrate attempts to utilize them.

One curious provision [subsection (b)(2)(B)] allows the exclusion of a disclosure statement that values for traditional land are excluded from stock values. This directly conflicts with proposed Sec. 7(r)(4), and does not seem advisable from a general policy perspective. This is a material fact which should be disclosed to shareholders in order to insure an informed decision. This subparagraph should be deleted.

The section also proposes a rather complex system to determine voting standards on extending restrictions and recapitalization which, when combined with an opt-in system (see below), can only lead to abusive practices intended to raise substantial barriers for extending restrictions. Under proposed subsection (d)(2), a majority of voting shareholders set the standards. Under this formula, as few as 25% of the shareholders could frustrate a majority desire to extend restrictions by raising standards of passage unreasonably.

A greater potential for abuse exists, under the recapitalization provision which allows the board of directors to elect that option as a sole means of protection. See Sec. 39(a). A board may effectively deliver a corporation to a takeover hostile to the shareholders by opting for the recapitalization option, removing all other effective protections. Next, the board would propose to raise the vote standard, needing only 25% of the shareholders to raise the standard, to two-thirds, which is almost impossible to obtain as a practical matter. Effectively, the section allows its Board to erect a number of barriers to protection against hostile takeover. As long as an opt-in method is used for the regions, this method of determining voting standards is simply unacceptable, and a fixed 51% standard should be used. The more flexible standard however, is appropriate to village votes under §8(c) (which are opt-out) and if an opt-out method is used for regions. This

would promote protections for retained Native control, which is the proper policy goal of the legislation.

Similarly, Sec. 36(d)(3) allows a corporation to give a veto to one class of stock (which may be alienable) over a resolution to transfer to a qualified transferee (Sec. 40) while not allowing a single class veto over recapitalization (Sec. 39). Again, this is counterproductive to a goal of favoring protections for Native control. Rather, the reference to Section 39 should be deleted from the subsection and "section 40" inserted in its place in order to promote the protections intended by the Act.

The AFN-ANC proposal provides that a question to the shareholders under the Act may be resubmitted to shareholders no more frequently than annually, unless the shareholders adopt a longer interval not to exceed 20 years. See p.16 of AFN-ANC proposal. This is designed to complement an opt-out system, and keep intra-corporation conflict to a minimum. However, in an opt-in system, it could foreclose consideration of needed protections. Thus, this language should be included in Sec. 36 and made applicable to questions under Sec. 8(c). If the Committee accepts AFN-ANC's proposal for opt-out procedures for regions, the provision should be made applicable to all questions.

Finally, the use of the opt-in system raises a concern over the use of proxies. While the practical logistics of Alaska require the use of mail-in voting by shareholders, the use of proxies by a management dedicated to a takeover hostile to the shareholders could lead to abusive practices. If an opt-in system is used, the regional corporation should be required to afford shareholders the ability to vote by mail-in ballot, presenting the question for direct voting by the shareholder. Use of discretionary proxies should be prohibited. The following language should be inserted in a new subsection (b)(1)(C):

"(C) In the case of amendments authorized by Sections 8(c)(2), 38 or 39, shareholders may vote by mail-in ballot. Undesignated proxies shall not be permitted.

A ballot shall be included with such notice under paragraph (B) together with instructions on the manner of shareholder voting by mail.

Sec. 9. Dissenters - Under the AFN-ANC and House bills, dissenters rights are optional. S.1145 establishes mandatory dissenters rights for regional corporations extending restrictions. TCC feels that dissenters rights for regional corporations should also be optional. Distinguishing between regional and village corporations on this issue is totally arbitrary since the same people are more often than not, shareholders in both village and regional corporations. The differential treatment of regions is not justified, except as a barrier to extending restrictions, which is contrary to the purpose of the legislation.

From a technical point of view, the first clause of subsection (b)(1) should read "Except as otherwise provided in this Act,". Such language is clearer, and more easily understood. Additionally, the language employed in the AFN-ANC draft dealing with valuation of stock (pp 23-24) is more readily understandable and should be employed, however, the exclusion of 7(i) and (j) interests in other region's traditional lands is consistent with the intent of the provision and should be included in the bill.

Sec. 10. Extension of Restrictions - This section of S.1145 probably presents a major concern to TCC by establishing an opt-in system for extension of restrictions on regional corporation stocks and a mandatory vote prior to 1991. TCC strongly supports AFN-ANC's proposal for automatic extension of stock restrictions with an opt-out procedure option. We believe that this offers the greatest protection for Native people.

However, if a regional opt-in method is used, many of the protections contained in S.1145 are desirable. A mandatory vote would guarantee that shareholders have an opportunity to vote on the issue. The option of issuing dissenters "alienable common stock" which may be life estate and non-voting for non-Natives would protect Native control of the Settlement, which is the

ultimate goal of this legislation. Finally, if opt-in is mandated, this mandatory vote should be governed by a majority of the total voting power of the corporation, and the voting standard should not be adjustable to a higher standard of passage prior to 1991.

Finally, S.1145 contains a number of typographical errors in subsection (g). Specifically in subparagraph (1)(A) the term "(4)(B)(i)" should read "(f)(2)(A)"; "(4)(A)" should read "(f)(1)", and in subparagraphs (B)(ii) and (iii) the term "(e)(2)" should read "(f)(2)".

Sec. 11 Recapitalization - This option as contained in S.1145 consistent with the AFN-ANC bill, however, under Sec. 39(a), the Board of Directors can unilaterally elect coverage under this section and foreclose other options from the shareholders. This essentially allows the Board to blackmail the shareholders into accepting whatever recapitalization plan is advanced by the Board. This is not consistent with the consensus AFN-ANC proposal. The decision to utilize recapitalization as an exclusive remedy to the 1991 problem should be made by the shareholders, not the Board. Given that caveat, TCC has no objection to the recapitalization option contained in S. 1145.

Sec. 12 Qualified Transferee Entity (Q.T.E.) - S 1145 differs from the AFN-ANC and House versions in several ways. The Q.T.E. section of S 1145 contains additional limitations on efforts to transfer lands to a more appropriate entity such as the traditional or I.R.A. tribal councils. In contrast to the AFN-ANC proposal, S.576 limits the eligibility of a Q.T.E. option only if the corporation has not issued other stock and adopts a plan to satisfy all its debts. The first condition effectively prevents a corporation from using any other option prior to the Q.T.E. This can work an unreasonable burden on corporations which want to provide additional options to elders, or "new Natives", prior to the Q.T.E. The second condition creates a greater barrier to transfer than exists under current law. To correct this, Sec. 40(a)(1)(A)(ii) and (iii) should be deleted.

Additionally, S.1145 does not allow transfer of Sec. 7(i) assets. Under H.R.278, 7(i) assets may be transferred, yet remain subject to 7(i) obligations. Under the H.R.278, there is no injury to any other region occasioned by transfer to a Q.T.E., and this option should be allowed. To correct this, subsection (a)(1)(C) should be deleted.

The proposal also does not allow tribes which receive transfer under this section to reconvey lands to the Secretary of the Interior in trust. Language, contained on p.34 [subsection (e)(3)] of AFN-ANC's draft, would allow this to occur. This merely allows tribes receiving lands under this section to utilize existing federal law.

The proposal in S1145 also contains extended liability for a Q.T.E. in subsection (c)(2) by providing that lands conveyed remain subject to any "obligation...to which such assets were expressly or potentially subject....". While there is no objection to retained liability to express obligations, the use of the word "potentially" is so vague as to open the Q.T.E. to tremendous liability which would defy precise projection. We strongly urge deletion of this word.

In subsection (c)(3)(B)(ii), the provisions expressly authorize state condemnation and tax liability. This is clearly not sovereignty neutral. We believe that the bill should remain silent on these issues to achieve true neutrality, and leave the matter up to the courts.

Finally, it should be clarified that this bill is not intended to preempt other immunities and protections which may exist under federal or state law. Specifically, we suggest that subsection (d)(3)(A) should begin with the following clause, "In addition to any other protection or immunity provided by other applicable law....". This will avoid unnecessary litigation over whether the immunities contained in this bill preempt or implicitly repeal other federal protections.

Sec. 13. Land Immunities - The section 13 of S.1145 differs substantially in form from AFN-ANC and H.R.278 in that S.1145 attempts to use the land bank legislation under ANILCA. The House bill is more understandable. In substance, the AFN-ANC proposal differs only with regard to treatment of subdivided land as developed. TCC strongly supports the AFN-ANC proposal as more practical and clearer.

Sec. 14-17. Provisions are substantially consistent with AFN-ANC position.

Sec. 18. Legal Challenge - We generally support the language used in S.1145, however, subsection (d), following the word "39", there should be added the following:

...or failure to conduct a mandatory election under Sec. 38(c)(1),...."

Such a provision is necessary if the legislation retains the opt-in procedure for regional corporations to allow protections for shareholders in the event a regional corporation fails to conduct the mandatory election.

Sec. 21. (misnumbered) Disclaimer - This disclaimer is simply too wordy to be neutral. The language is obviously less than neutral on the issue. We strongly endorse either the House disclaimer or the AFN-ANC proposal, since either is more neutral than that contained in S.1145.

CONCLUSION

In its current form, S 1145 presents many significant departures from the joint AFN-ANC proposal. The objectionable features include:

1. Inability of elders to receive additional settlement stock.
2. An expanded disclaimer section.
3. Omissions from the Q.T.E. sections of authority for Q.T.E. to reconvey to the government, preservation of existing legal protections and reference to State condemnation and taxation.
4. Procedural barriers to extension of restrictions and other protections in Sec. 8.
5. Opt-in for regions.
6. Inheritance by non-Natives through intestacy.
7. Mandatory dissenters rights for regional corporations extension of restrictions.
8. Recapitalization option triggered by Board rather than shareholders.
9. Use of land bank for immunities.

If the opt-in for regions is retained, we favor adequate protections to allow shareholders to extend restrictions if the majority desires. This includes the mandatory vote prior to 1991 with use of direct shareholder balloting with a simple majority standard of passage during this period. Shareholders must have a legal recourse to compel this mandatory vote with injunctive protections retaining restrictions until it is held. The use of alienable common stock as an alternative manner of dealing with dissenters would also be necessary. Additionally, class veto rights should not operate to defeat extension of restrictions.

Finally, we must note that the disclaimer and Q.T.E. sections contained in S 1145 are offensive. We would welcome the opportunity to work with the Alaska delegation in an effort to seek some compromise, however, in its current form, we would urge the committee to simply substitute either the AFN-ANC or House versions.

Senator MURKOWSKI. Thank you very much.

The next witness is John Borbridge, executive committee, Alaska Native Coalition. So nice to see you this morning. We welcome you to the Committee. You have been following this legislation for a long time. I think Mike Harvey, who is chief counsel to the majority, who is seated at my right, is well known to you and others. I believe that Mike has been on this legislation 21 years or thereabouts, not this, but various aspects of Alaska native claims legislation. I know, John, you have been around that long or longer. So I look forward to your testimony, and please proceed as you wish.

STATEMENT OF JOHN BORBRIDGE, MEMBER, EXECUTIVE COMMITTEE, ALASKA NATIVE COALITION

Mr. BORBRIDGE. Thank you, Mr. Chairman.

My name is John Borbridge, and I am testifying on behalf of the Alaska Native Coalition as a member of its executive committee. I am a Tlingit Indian from Juneau, Alaska. I am also testifying from my previous experience as one of the principal native architects of the 1971 Alaska Native Claims Settlement Act as the first president and chairman of the board of Sealaska, the Southeast Native Regional Corporation, and as a commissioner on the American Indian Policy Review Commission.

ANCSA of 1981 was our country's response to the just tribal land claims of Alaska's Indians, Eskimos, and Aleuts. At a time when the institutions of our government were being severely tested, the Alaska natives demonstrated their faith by pursuing a resolution of their land rights within the system. The amendatory process which addresses its deficiencies often causes us to forget that ANCSA was an Act of justice that was unprecedented as to its magnitude and complexity. We can all be justly proud of the primary thrust of that Act. The 1971 landmark legislation did not alter nor was it intended to alter the status of our Alaska native tribes. The proposed amendments to ANCSA are intended to be neutral on the issue of native tribal sovereignty. The preservation of a sovereignty neutral posture in this legislation is a vital concern to the coalition.

Service on the American Indian Policy Review Commission taught me the differences in our economic and social conditions are diminished by this one common goal that we American Indian tribes share. It is our desire to forever remain Eskimo, Sioux, Cherokee, Tlingit, Haida, Athabascan, Arapahoe, Navajo, Aleut, Zuni, Yakima, Tsimpsian, Apache, and others known but not named. In essence we are all proud of our tribal heritage. We want to keep that which has served us and of which we have been part from time immemorial.

My service as president of the Tlingit and Haida Central Council, our tribal government body for the southeast tribes, and also as president and chairman of the board of the ANCSA Sealaska Corporation taught me that ANCSA corporations have their strengths and their limitations. It is true that in many villages in Alaska the corporate system imposed by ANCSA in 1971 is not working.

It is equally clear that if matters do not change, Alaska natives will lose much of their lands. The tribal option which would allow ANCSA village corporations that wish to opt out of the corporate

system by transferring title to their ANCSA lands to their tribal governments was developed primarily by village spokesmen at a statewide convention of the Alaska Federation of Natives. That is fundamental to the position of the coalition, just as is the proposition that we will fight the weakening of our native tribal institutions as a price of obtaining a tribal option.

The Berger Commission report, *Village Journey*, presented the deeply felt concerns of Alaska natives who had experienced the unfulfilled promises and inadequacies of the corporate world in rural Alaska. Their message is clear. They want the tribal option.

In essence, Mr. Chairman, the Alaska Native Coalition wants us to hold onto our native lands. It seeks the preservation of our tribal governments and the utilization of these institutions in saving our lands for those who will come after. We want to be who we are with our lands in our hands and our tribal governments in place as they have been from times that antedate the formation of our State and our Nation.

The United States invested heavily in doing justice to us in 1971. Now we ask that you help us to make ANCSA work for us in 1987 and for the generations yet to come. For reasons that will be stated by Coalition Chairman Willie Kasayulie, I, too, offer my support for the record for the draft AFN coalition 1991 bill, and oppose the antitribalism provisions of S. 1145 that will be described in detail by Chairman Kasayulie.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Borbridge follows:]

TESTIMONY OF JOHN BORBRIDGE,
ON BEHALF OF THE ALASKA NATIVE COALITION
REGARDING S. 1145

BEFORE THE PUBLIC LANDS, NATIONAL PARKS AND
FORESTS SUBCOMMITTEE OF THE SENATE ENERGY AND
NATURAL RESOURCES COMMITTEE

May 19, 1987

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS JOHN BORBRIDGE AND I AM TESTIFYING ON BEHALF OF THE ALASKA NATIVE COALITION AS A MEMBER OF ITS EXECUTIVE COMMITTEE. I AM A TLINGIT INDIAN FROM JUNEAU, ALASKA. I AM ALSO TESTIFYING FROM MY PREVIOUS EXPERIENCE AS ONE OF THE PRINCIPAL NATIVE ARCHITECTS OF THE 1971 ALASKA NATIVE CLAIMS SETTLEMENT ACT, AS THE FIRST PRESIDENT AND CHAIRMAN OF THE BOARD OF SEALASKA, THE SOUTHEAST NATIVE REGIONAL CORPORATION, AND AS A COMMISSIONER ON THE AMERICAN INDIAN POLICY REVIEW COMMISSION.

ANCSA OF 1971 WAS OUR COUNTRY'S RESPONSE TO THE JUST TRIBAL LAND CLAIMS OF ALASKA'S INDIANS, ESKIMOS, AND ALEUTS. AT A TIME WHEN THE INSTITUTIONS OF OUR GOVERNMENT WERE BEING SEVERELY TESTED, THE ALASKA NATIVES DEMONSTRATED THEIR FAITH BY PURSUING THE RESOLUTION OF THEIR LAND RIGHTS WITHIN THE SYSTEM. THE AMENDATORY PROCESS, WHICH ADDRESSES ITS DEFICIENCIES, OFTEN CAUSES US TO FORGET THAT ANCSA WAS AN ACT OF JUSTICE THAT WAS UNPRECEDENTED AS TO ITS MAGNITUDE AND COMPLEXITY. WE CAN ALL BE PROUD OF THE PRIMARY THRUST OF THAT ACT.

THE 1971 LANDMARK LEGISLATION DID NOT ALTER, NOR WAS IT INTENDED TO ALTER, THE STATUS OF OUR ALASKA NATIVE TRIBES. THE PROPOSED AMENDMENTS TO ANCSA ARE INTENDED TO BE NEUTRAL ON THE ISSUE OF NATIVE TRIBAL SOVEREIGNTY. THE PRESERVATION OF A SOVEREIGNTY NEUTRAL POSTURE IN THIS LEGISLATION IS A VITAL CONCERN TO THE COALITION.

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SERVICE ON THE AMERICAN INDIAN POLICY REVIEW COMMISSION TAUGHT ME THAT DIFFERENCES IN OUR ECONOMIC AND SOCIAL CONDITIONS ARE DIMINISHED BY THIS ONE COMMON GOAL THAT WE AMERICAN INDIAN TRIBES SHARE. IT IS OUR DESIRE TO FOREVER REMAIN ESKIMO, SHOIX, CHEROKEE, TLINGIT, HAIDA, ATHABASCAN, ARAPAHOE, NAVAJO, ALEUT, ZUNI, YAKIMA, TSIMPSIAN, APACHE - AND OTHERS KNOWN BUT NOT NAMED. WE ARE ALL PROUD OF OUR TRIBAL HERITAGE.

MY SERVICE AS THE PRESIDENT OF THE TLINGIT AND HAIDA CENTRAL COUNCIL, OUR TRIBAL GOVERNING BODY FOR THE SOUTHEAST TRIBES, AND AS PRESIDENT AND CHAIRMAN OF THE BOARD OF THE ANCSA SEALASKA CORPORATION TAUGHT ME THAT ANCSA CORPORATIONS HAVE THEIR STRENGTHS AND THEIR LIMITATIONS. IT IS CLEAR THAT IN MANY ALASKA VILLAGES, THE CORPORATE SYSTEM, IMPOSED BY ANCSA IN 1971, IS NOT WORKING. IT IS EQUALLY CLEAR THAT IF MATTERS DO NOT CHANGE, ALASKA NATIVES WILL LOSE MUCH OF THEIR LANDS.

THE "TRIBAL OPTION", WHICH WOULD ALLOW ANCSA VILLAGE CORPORATIONS THAT WISHED TO, TO OPT OUT OF THE CORPORATE SYSTEM BY TRANSFERRING TITLE TO THEIR ANCSA LANDS TO THEIR TRIBAL GOVERNMENTS, WAS DEVELOPED PRIMARILY BY VILLAGE SPOKESMEN AT A STATEWIDE CONVENTION OF THE ALASKA FEDERATION OF NATIVES. THAT IS FUNDAMENTAL TO THE POSITION OF THE COALITION, JUST AS IS THE PROPOSITION THAT WE WILL FIGHT THE WEAKENING OF OUR NATIVE TRIBAL INSTITUTIONS AS THE PRICE OF OBTAINING A TRIBAL OPTION.

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THE BERGER COMMISSION REPORT, VILLAGE JOURNEY, PRESENTED THE DEEPLY FELT CONCERNS OF ALASKA NATIVES WHO HAD EXPERIENCED THE UNFULFILLED PROMISES AND INADEQUACIES OF THE CORPORATE WORLD IN RURAL ALASKA. THEIR MESSAGE IS CLEAR. THEY WANT THE TRIBAL OPTION.

IN ESSENCE, MR. CHAIRMAN, THE ALASKA NATIVE COALITION WANTS US TO HOLD ON TO OUR NATIVE LANDS. IT SEEKS THE PRESERVATION OF OUR TRIBAL GOVERNMENTS AND THE UTILIZATION OF THESE INSTITUTIONS IN SAVING OUR LANDS FOR "THOSE WHO WILL COME AFTER." WE WANT TO BE WHO WE ARE WITH OUR LANDS IN OUR HANDS AND OUR TRIBAL GOVERNMENTS IN PLACE, AS THEY HAVE BEEN FROM TIMES THAT ANTEDATE THE FORMATION OF OUR STATE AND OUR NATION. THE UNITED STATES INVESTED HEAVILY IN DOING JUSTICE TO US IN 1971. NOW WE ASK THAT YOU HELP US TO MAKE ANCSA WORK FOR US IN 1987 AND THE GENERATIONS YET TO COME.

FOR REASONS STATED BY COALITION CHAIRMAN WILLIE KASAYULIE, I SUPPORT THE DRAFT AFN - COALITION 1991 BILL AND OPPOSE THE ANTI-TRIBALISM PROVISION OF S. 1145 THAT WERE DESCRIBED IN DETAIL BY OUR CHAIRMAN.

Senator MURKOWSKI. Thank you very much, Mr. Borbridge. Our next witness will be Willie Kasayulie, chairman of the Alaska Native Coalition. We wish you a good morning, and you may proceed.

**STATEMENT OF WILLIE KASAYULIE, CHAIRMAN, ALASKA
NATIVE COALITION**

Mr. KASAYULIE. Than you, Mr. Chairman. My name is Willie Kasayulie, and I am testifying on behalf of the Alaska Native Coalition. I am chairman of the coalition which was formed nearly two years ago to represent the views of tribal governments and village corporations in Alaska. We have a membership of over 60 tribal governments and village corporations, and have recently added the Tanana Chiefs to our membership. Continued native land ownership is essential to the preservation of native tribes and other existing native institutions.

Without such existence the native subsistence lifestyle will be jeopardized. The rich cultural diversity of the State of Alaska is likewise dependent upon the continued existence of Alaska native tribes and other native institutions. The corporate model adopted by ANCSA is not working in many of the villages. Continuation of this form will result in the loss of much of the land obtained in 1971. Also, villages are simply overrun by the number and complexity of institutions with which we must deal.

In my village, for example, we have dissolved our State chartered municipality since we already have a tribal government to administer law and provide services. We also wish to have our tribal government hold a land grant to the corporations to settle our tribal claim. Only in tribal hands will the land be assured of remaining forever in native ownership. We support the provisions in the land bank which automatically protect undeveloped native corporation land. We also support the automatic extension of the restrictions on alienation of village corporation stock, continued native control of the land can best be achieved by making use of tribal governments.

Therefore a tribal option permitting the transfer of native corporation land to tribal governments is essential. This option is provided by the QTE section of the House and Senate bills but is defective in each case. The coalition opposes S. 1145 and urges the Committee to adopt a proposed substitute jointly drafted by the coalition and the AFN. S. 1145 is virtually identical to the version of the 1991 amendments which was voted down by an overwhelming margin at last October's AFN convention. H.R. 278 and S. 1145 do provide a way to transfer the land to tribes, but there are strings attached which take away tribal rights we believe exist right now.

Alaska Native Tribes should not be discriminated against, and this Committee must not report out legislation which terminates important tribal rights in return for providing the option. There is no reason for not affording us the same rights as Indian tribes in the lower 48. We have four specific tribal concerns related to the QTE section. First, this legislation allows the State to condemn tribally owned land, treatment no other tribe is subjected to. Second, it allows the State to tax land held by tribal governments.

This interferes with the natives' self-government and provides another method by which the native land base will be diminished.

Third, the legislation prohibits tribes from transferring land to the Secretary of the Interior to be held in trust. This option should not be foreclosed by legislation. We are also concerned with certain corporate provisions that could lead to the concentration of power in the hands of a few wealthy shareholders. Portions of the bill allow issuance of additional shares to certain identifiable groups. Our fear is that only the wealthy would be able to purchase shares and thus obtain control of the corporation.

Another section also provides that corporations may buy back shares from stockholders. Cash-poor villages are most likely to sell their voice in corporate affairs. This could lead to decisionmaking by a few shareholders which may not be in the interest of cash-poor villages who depend on corporate lands for subsistence.

For these and other reasons, we oppose these corporate provisions. It is our understanding that the AFN also supports dropping the buy-back provision. The attached letter to Chairman Johnson and Coalition position paper outline our views on each of these matters in greater detail. The coalition has worked with AFN to develop a neutral tribal option. We were forced to ask our friends in the Senate to kill the Stevens-Murkowski version of H.R. 278 last year when a neutral tribal option was not provided. We are prepared to do so again unless tribal rights which exist now remain in place. We urge the Committee to adopt the joint AFN Coalition substitute for H.R. 278 and reject S. 1145 in its present form.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Kasayulie follows:]

TESTIMONY OF WILLIE KASAYULIE,
CHAIRMAN OF THE ALASKA NATIVE COALITION
REGARDING S. 1145

BEFORE THE PUBLIC LANDS, NATIONAL PARKS AND
FORESTS SUBCOMMITTEE OF THE SENATE ENERGY AND
NATURAL RESOURCES COMMITTEE

May 19, 1987

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS WILLIE KASAYULIE AND I AM TESTIFYING ON BEHALF OF THE ALASKA NATIVE COALITION. I AM CHAIRMAN OF THE COALITION, WHICH WAS FORMED NEARLY TWO YEARS AGO TO REPRESENT THE VIEWS OF TRIBAL GOVERNMENTS AND VILLAGE CORPORATIONS IN ALASKA. WE HAVE A MEMBERSHIP OF OVER SIXTY TRIBAL GOVERNMENTS AND VILLAGE CORPORATIONS AND HAVE RECENTLY ADDED THE TANANA CHIEFS CONFERENCE TO OUR MEMBERSHIP.

CONTINUED NATIVE LAND OWNERSHIP IS ESSENTIAL TO THE PRESERVATION OF NATIVE TRIBES AND OTHER EXISTING NATIVE INSTITUTIONS. WITHOUT SUCH EXISTENCE, THE NATIVE SUBSISTENCE LIFESTYLE WILL BE JEOPARDIZED. THE RICH CULTURAL DIVERSITY OF THE STATE OF ALASKA IS LIKewise DEPENDENT UPON THE CONTINUED EXISTENCE OF ALASKA NATIVE TRIBES AND OTHER NATIVE INSTITUTIONS.

THE CORPORATE MODEL ADOPTED BY ANCSA IS NOT WORKING IN MANY OF THE VILLAGES. CONTINUATION OF THIS FORM WILL RESULT IN THE LOSS OF MUCH OF THE LAND OBTAINED IN 1971. ALSO, VILLAGES ARE SIMPLY OVERWHELMED BY THE NUMBER AND COMPLEXITY OF INSTITUTIONS WITH WHICH WE MUST DEAL. IN MY VILLAGE, FOR EXAMPLE, WE HAVE DISSOLVED OUR STATE-CHARTERED MUNICIPALITY SINCE WE ALREADY HAVE A TRIBAL GOVERNMENT TO ADMINISTER LAW AND PROVIDE SERVICES. WE ALSO WISH TO HAVE OUR TRIBAL GOVERNMENT HOLD THE LAND GRANTED TO THE CORPORATIONS TO SETTLE OUR TRIBAL CLAIM. ONLY IN TRIBAL HANDS WILL THE LAND BE ASSURED OF REMAINING FOREVER IN NATIVE OWNERSHIP. WE SUPPORT THE PROVISIONS IN THE LAND BANK WHICH AUTOMATICALLY PROTECT UNDEVELOPED NATIVE CORPORATION LAND. WE

ALSO SUPPORT THE AUTOMATIC EXTENSION OF THE RESTRICTIONS ON ALIENATION OF VILLAGE CORPORATION STOCK.

CONTINUED NATIVE CONTROL OF THE LAND CAN BEST BE ACHIEVED BY MAKING USE OF TRIBAL GOVERNMENTS. THEREFORE, A "TRIBAL OPTION" PERMITTING THE TRANSFER OF NATIVE CORPORATION LAND TO TRIBAL GOVERNMENTS IS ESSENTIAL. THIS OPTION IS PROVIDED BY THE QTE SECTION OF THE HOUSE AND SENATE BILLS, BUT IS DEFECTIVE IN EACH CASE.

THE COALITION OPPOSES S. 1145 AND URGES THE COMMITTEE TO ADOPT THE PROPOSED SUBSTITUTE JOINTLY DRAFTED BY THE COALITION AND THE AFN. S. 1145 IS VIRTUALLY IDENTICAL TO THE VERSION OF THE 1991 AMENDMENTS WHICH WAS VOTED DOWN BY AN OVERWHELMING MARGIN AT LAST OCTOBER'S AFN CONVENTION. H.R. 278 AND S. 1145 DO PROVIDE A WAY TO TRANSFER THE LAND TO TRIBES, BUT THERE ARE STRINGS ATTACHED WHICH TAKE AWAY TRIBAL RIGHTS WE BELIEVE EXIST RIGHT NOW. ALASKA NATIVE TRIBES SHOULD NOT BE DISCRIMINATED AGAINST AND THIS COMMITTEE MUST NOT REPORT OUT LEGISLATION WHICH TERMINATES IMPORTANT TRIBAL RIGHTS IN RETURN FOR PROVIDING THE OPTION. THERE IS NO REASON FOR NOT AFFORDING US THE SAME RIGHTS AS INDIAN TRIBES IN THE LOWER FORTY-EIGHT.

WE HAVE FOUR SPECIFIC TRIBAL CONCERNS RELATED TO THE QTE SECTION. FIRST, THIS LEGISLATION ALLOWS THE STATE TO CONDEMN TRIBALLY-OWNED LAND--TREATMENT NO OTHER TRIBE IS SUBJECTED TO. SECOND, IT ALLOWS THE STATE TO TAX LAND HELD BY TRIBAL GOVERNMENTS. THIS INTERFERES WITH NATIVE SELF-GOVERNMENT AND PROVIDES ANOTHER METHOD BY WHICH THE NATIVE LAND BASE WILL BE

DIMINISHED. THIRD, THE LEGISLATION PROHIBITS TRIBES FROM TRANSFERRING LAND TO THE SECRETARY OF THE INTERIOR TO BE HELD IN TRUST. THIS OPTION SHOULD NOT BE FORECLOSED BY LEGISLATION.

WE ARE ALSO CONCERNED WITH CERTAIN CORPORATE PROVISIONS THAT COULD LEAD TO THE CONCENTRATION OF POWER IN THE HANDS OF A FEW WEALTHY SHAREHOLDERS. PORTIONS OF THE BILL ALLOW ISSUANCE OF ADDITIONAL SHARES TO CERTAIN IDENTIFIABLE GROUPS. OUR FEAR IS THAT ONLY THE WEALTHY WOULD BE ABLE TO PURCHASE SHARES AND THUS OBTAIN CONTROL OF THE CORPORATION. ANOTHER SECTION ALSO PROVIDES THAT CORPORATIONS MAY BUY BACK SHARES FROM STOCKHOLDERS. CASH-POOR VILLAGERS ARE MOST LIKELY TO SELL AND THUS LOSE THEIR VOICE IN CORPORATE AFFAIRS. THIS COULD LEAD TO DECISION-MAKING BY A FEW SHAREHOLDERS WHICH MAY NOT BE IN THE INTEREST OF CASH-POOR VILLAGERS WHO DEPEND ON CORPORATE LANDS FOR SUBSISTENCE. FOR THESE AND OTHER REASONS, WE OPPOSE THESE CORPORATE PROVISIONS. IT IS OUR UNDERSTANDING THAT THE AFN ALSO SUPPORTS DROPPING THE BUY BACK PROVISION. THE ATTACHED LETTER TO CHAIRMAN JOHNSTON AND COALITION POSITION PAPER OUTLINE OUR VIEWS ON EACH OF THESE MATTERS IN GREATER DETAIL.

THE COALITION HAS WORKED WITH AFN TO DEVELOP A NEUTRAL TRIBAL OPTION. WE WERE FORCED TO ASK OUR FRIENDS IN THE SENATE TO KILL THE STEVENS-MURKOWSKI VERSION OF H.R. 278 LAST YEAR WHEN A NEUTRAL TRIBAL OPTION WAS NOT PROVIDED. WE ARE PREPARED TO DO SO AGAIN UNLESS TRIBAL RIGHTS WHICH EXIST NOW REMAIN IN PLACE. WE URGE THE COMMITTEE TO ADOPT THE JOINT AFN-COALITION SUBSTITUTE FOR H.R. 278 AND REJECT S. 1145 IN ITS PRESENT FORM. THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

Senator MURKOWSKI. Thank you very much, Willie. I appreciate your testimony. It is apparent that the panel obviously has some views that are contrary to the intent of the legislation that has been introduced in both the House and the Senate. As a consequence, while this comes as no surprise, it does represent a bit of a quandary as we proceed with some type of legislation or other, as well as trying to keep our basic commitment to fast approaching 1991, where if something is not done, why, the shares will be transferable, and, as a consequence the resources, namely the land, will have the capability of moving into the free movement associated with what corporate stock ownership implies, and that is that the assets can move outside the corporation.

Let me, in view of that, ask a question of the panel, and anyone can respond to it. Assuming we recognize that this legislation, in order to consider the concerns of all Alaskans, has to represent a compromise. And recognizing that we have had 14 hearings and have had differences of opinion and will continue to have differences of opinion. Is it your contention that you wish to hold out for the bill that represents your position vis-a-vis the alternative which as been generally suggested by the president of the AFN, Janie Leask? Or would you support another alternative, which would be to just proceed with a 1991 extension? I would ask Janie if she has any comments with regard to those alternatives.

Ms. LEASK. Thank you, Mr. Chairman.

The simple extension was an item of discussion during a couple of years ago at an AFN convention, and it has been talked about. It from our perspective does not really solve any of the problems other than just the simple continuation of restrictions. There are a lot of other problems with the Settlement Act that this legislation and the amendments represent that would not be solved by a simple extension. I think it is fair to say that AFN's problems with the legislation comes down to the three basic issues of the opt in and the mandatory dissenters' rights and the QTE and disclaimer.

We feel very strongly about those, but at the same time at the last meeting of the AFN board in which we talked about and gave a brief update on the legislation and wherein all the progress was we did talk about in particular the QTE and disclaimer, and it was, I think, fair to say by the AFN board of directors that they could not live with the existing disclaimer in the Senate legislation. They directed us to talk about various alternatives to that disclaimer and to the whole QTE. One of those—that goes a long a whole wide variety from maybe doing a State chartered entity to a modified disclaimer on which that would be based to doing the AFN disclaimer and the AFN QRW, to doing, if it meant it, no QTE with some kind of modified disclaimer.

Our preference, of course, is to have the QTE that is represented in the AFN legislation and the disclaimer that is represented in the AFN legislation. We feel very strongly that we need to have 1991 legislation. We would like to have it this year. There is a lot of planning and all that regional corporations and village corporations need to do to educate their shareholders of the options that are contained in those. We would like to use the simple extension as a last resort. We would be prepared to sit down and talk about

the other portions of the problems that we do have with the legislation.

Senator MURKOWSKI. Do you feel that it is possible to get a unified position among the Alaska Native community that would allow the Committee to consider the position of the Native community where we have obviously the Alaska Native Coalition position and the AFN's position and there is a difference in those positions? Do you feel it is likely that the Native community can get behind one position?

Ms. LEASK. Well, I think as Mr. Katz from the State had also indicated and other people have also indicated, I do not think that it is either possible or I do not think—I think maybe it is asking an awful lot for the natives of the State of Alaska to come together in a united opinion on a particular piece of legislation. I think that while AFN has had various differences in approach and strategy with the Alaska Native Coalition, I think a consensus within certainly the AFN membership would be possible, but then again that would be talking specifics, and that would be something that we would have to take back to our board. But I would like to think—I think the people within the State and certainly reflected through our conventions feel very strongly about getting 1991 legislation passed and I think that here is a possibility for a strong consensus within the native community.

Senator MURKOWSKI. In your statement you indicated that the Senate amendment tilted the scale and tipped the balance in favor of those who oppose the aspirations of Native people to exercise powers of self-government. I think it is fair to say that the intent of the Chairman as a consequence of the 13 hearings that have been held with this being the 14th was whatever implied powers towards sovereignty that ANCSA allowed, either in fact or implied, are not touched. But it is not the intent of the 1991 amendments specifically to expand, foster, sovereignty further than what was already implied in ANCSA. That happens to be the intention of, I think, Senator Stevens and myself. I will speak for myself. Where do we have a conflict here?

I am going to have Janie also respond because she raised it as part of her statement. Go ahead.

Mr. BORBRIDGE. Mr. Chairman, the concern we have without in any way questioning the good faith of our Senators with whom we have worked on many, many issue together, we are concerned because a disclaimer in the Senate bill denies the natives' illegal argument that they have under the law which argument is not implementable simply because of the cost of dissenters' rights. Under current law the Secretary may take native lands into trust. There is a prohibition against that in the Senate bill. As to taxation, under current Federal law there would not be a right to tax our native lands in Alaska, but the implication here is that the State may tax native tribal lands. Under current Federal law the State would not have the power to condemn native tribal lands, but it is clear in the Senate bill that the State would have that power.

So that what we are saying in effect is that as a cost of having a tribal option which would be workable through a QTE which would allow transfer of ANCSA corporation lands by the vote of shareholders to native tribal governments, there would be the necessity

of agreeing to these changes in the law which would have the effect of weakening our tribal powers. In effect it would constitute a change in the status quo, and this concerns us greatly.

Senator MURKOWSKI. I guess it is a matter of interpretation and intent, and that is one of the concerns that we have as we pass legislation, is to determine what legislative intent is, but it always has the exposure of running into conflict with legal interpretation. I want to make it very clear that it is the intent that this legislation not address sovereignty, and that has been made clear in the bill.

Janie, do you have any comment on the question of how you feel that the Senate amendment tilted the scale?

Ms. LEASK. Yes, I do. There was a favorite well used phrase going around at the end of last year, I believe, as trying to find neutrality on this whole sovereignty issue as like trying to balance a marble on the edge of a razor blade, that it either tilted one way or the other. I think there was a lot of desire both last year and this year to have the legislation remain neutral on the whole question of sovereignty. What it came down to last year in the Senate disclaimer and again what is included in this year's Senate disclaimer was that the whole feeling that that disclaimer took away an existing right, and that it had not only potential impacts or impacts nor only on Alaska but also on national Indian organizations as well, and if I might just have Don Mitchell, who is with me here today, just elaborate just a little bit on that for me.

Senator MURKOWSKI. Please introduce yourself.

Mr. MITCHELL. Yes, Mr. Chairman. For the record, my name is Donald Mitchell. I am counsel of the Alaska Federation of Natives.

I believe that the answer to the Chairman's question is contained at the end of the written statement that AFN has submitted. To summarize it briefly, at least as I understand the argument, it is that under existing law if there was no 1991 legislation a village corporation is legally empowered by Alaska law to transfer its assets, including its land, to anyone it wants. That would include an IRA or traditional native council.

On the other hand, I think that everyone agrees that an IRA or traditional native council is certainly empowered to own legal title to land, and in fact many do, and that has really nothing to do necessarily with the governmental authority of that entity as a governing body of a group of native people. So the transfer can be made pursuant to State law if there is no 1991 legislation. However, if that transfer is not made for valid consideration, in other words, if the IRA council does not pay market value for whatever the land might be worth, then under Alaska law there are certain procedural hoops that have to be jumped through.

The first is that that transfer not in the ordinary course of business would have to be made by an affirmative two-thirds vote of the village corporation shareholders rather than, say, 50 percent as in some versions of the legislation. Secondly, there would at least be an opportunity, although it is a very narrow one under State law, for dissenting shareholders to that vote to request that they be cashed out before the transfer is made. So the point is that there can be a transfer, there can be ownership of ANCSA village corporation lands by an IRA council right now under existing law.

Now, once that transfer takes place, and I think that I am not real qualified on this, perhaps some of the lawyers representing tribal organizations might want to comment after I am through, but as I understand the lower court case law, the ownership or the identity of who owns fee land may in fact be considered by the courts as a relevant factor, not a determinative factor necessarily, but certainly a relevant factor, with respect to making a judicial determination as to whether or not that fee land, because it is owned by an Indian tribe, is "Indian country" with all of the legal ramifications of that determination.

So under the joint Stevens-Murkowski substitute, or Stevens-Murkowski bill, basically the way the disclaimer is presently drafted, a IRA council that goes through exactly the process that it is presently entitled to go through now under State law, if it uses the QTE section to make it a little easier to make that transfer, other policy reasons than just sovereignty, that is the price of getting that land into community ownership in order to get rid of the young native problem, in order to get rid of the stock management problem, and all kinds of other very legitimate policy goals other than native sovereignty, that the price that the community has to pay is that it can no longer stand up in court should it choose to do so and make exactly the argument that it would be empowered to make if the bill was not enacted into law, which is that because it is an IRA council and because it owns legal title to these ANCSA lands, that therefore the land is Indian country. It is obviously a very technical, confusing argument, but as I understand it that is why people do believe, I think with is some justification, that they are being asked to give up a right that they do presently have.

Would you—did I get that right?

Senator MURKOWSKI. Basically what I am hearing is that it would basically make it easier to transfer under the proposed position of the AFN as opposed to the capability of transferring under State law. Of course the testimony that we have heard throughout the hearing process highlighted great concern about establishing another "governmental entity," and I use that in general terms, because the implication of what that means is different things to different people. And I think this is the crux of where we are in the sense of looking at what is intended in the 1991 legislation vis-a-vis the authority implied under ANCSA, whatever it might be, and I appreciate your effort to clarify the point that it would make it easier to transfer under your position vis-a-vis State law and the concern as expressed by the State of Alaska in Mr. Katz's statement with regard to the implications that that might bring about.

I have several questions. We have a vote, but I am going to proceed and during the time that I am going to have to leave, which will be not more than four or five minutes, I am going to ask to continue with the questions. I want to comment with regard to a couple of things that have come up so far that I think bear an explanation. One is the question of why not introduce—why we did not introduce the AFN alternative bill.

I felt that since we had had hearings on both the House and Senate bill, to at this point bring in another bill would imply that there was support by the delegation when indeed the delegation, through the process of the hearings, developed the two bills we

have before us, would send a somewhat confusing signal, and I think I explained that in those general terms when it was brought up, so that is the extent of my comment with regard to that.

The reference by John Borbridge that the corporations are not working, John, you were there when the initial dilemma was being debated whether to go the conventional reservation route or the corporate route, and the selection was made the corporate route.

My question to you is, if indeed whatever legislation is finally adopted does allow the transfer of assets to other entities, and let us assume that a corporation will form and merge into an association, and in order to achieve that those shareholders will have to physically give up that hundred shares of stock for the benefit of the whole, which would imply that they are giving up some of their individual net worth. In other words, they are saying I have got 100 shares for the benefit, I am going to give it to the association. I will no longer have it, no longer have individual ownership. I am sure there will be others who will not want to do that. They will want to hang on. How do you, if you have the authority to transfer assets to other entities, and you are moving into the implied collective ownership vis-a-vis the individual ownership, how do you take care of those dissenters that would very realistically occur under that set of suggestions? What are you going to do?

Mr. BORBRIDGE. I think firstly we would hope looking just at the legal question which obviously legal advice would be needed, but it would be possible to have in the legislation a provision which would provide for the transfer of lands and which would also take care of dissenters' rights. In terms of the broad—

Senator MURKOWSKI. You are going to have to pay them off. You are going to have to do something with them, because they are not going to want to give their stock up and put it in the association. They are going to want to hang on.

Mr. BORBRIDGE. What I would like to do, Senator, is that, all right, let us concede that there is a corporation where that may occur and we are faced with that problem. I would like to enter into the record the proposition that another situation will occur. Instead of people feeling they are giving up something that is so valuable in shares of stock what they are going to say is not only can we live the way we have lived before, we have that collective sense of our tribal identity. When you are a member of a tribe, Mr. Chairman, you do not stop to determine the individual worth in terms of dollars, of what it means to be a Tlingit or a Navajo or a Cherokee or Eskimo.

In that case, and I would say that we are moving to recapture the essence of what we are, and the essence that enabled us to assert our claims of aboriginal titles to lands. I would see circumstances, Mr. Chairman, in which a corporation and its shareholders would be very, very happy to transfer their lands, because they would be able to rely on tribal institutions, and the use of those tribal institutions antedated the formation of the State of Alaska and the United States.

Senator MURKOWSKI. I am going to have to run over and vote. One of the things that we in the delegation continually receive from native shareholders are all types of views, including the views that I want my stock in 1991, and I want to have the right to do

with it what was originally intended, and that is "the right of free choice," so there are those views as we all know, and the rights of dissenters is a basic premise of our Constitution, the rights of a minority, and I think the point has been well made by the panel that in the case of Native ownership and Native rights, why, there is another side and a very legitimate side, and that is the application of the good of the whole.

I have got several other questions that we are going to proceed for the record, and I am going to run over and vote, and I will be gone for a few minutes, and I would ask that my legislative director, Tom Roberts, ask the specific questions for the record. Please proceed. It has been cleared with the minority.

[Pause.]

Mr. ROBERTS. Janie, I think we will start with you on some of the questions that relate to the opt in, opt out issue. As you well know, the current bill in the Senate, S. 1145, would provide for automatic extension restrictions for villages and require an opt in vote for regions.

In your testimony, you pointed out the question of a lack of consistency in the policy distinguishing between regions and villages. And I believe that as the process unfolded last fall, one of the rationalizations for that distinction had to do with the economic viability of regions versus village. Do you feel that there is a distinction that can legitimately be made between villages, village corporations and regional corporations in terms of their economic viability and, as a consequence of that, the expectations that their shareholders can have with respect to financial return from the differing stocks, the regional stocks on the one hand and the village stock on the other.

Ms. LEASK. As far as the economic viability in some instances there is a difference between the villages in a particular region and the regional corporation. But likewise in some instances there is not. One of the reasons why we feel it is important that both regions and villages have the continuation of stock restrictions, and if their shareholders want them to terminate those restrictions they can vote to do that is because of the varying degrees in the different villages and regions and the different situations that villages and—well, village shareholders are the same shareholders within the different regional corporations. Granted, some of the regional corporations do have a larger at large shareholder population than some of the other ones do. But basically we felt that there really should not be any distinction between villages and regions. Some of the regions would have an opportunity through more dollars and a larger organization to be able to get out the word and to be able to educate their shareholders a little bit more than some of the villages, but I do not think on a whole that that is necessarily or that should be the deciding factor, because there are some regional corporations that do not have the sophistication to really get the word out and to educate their shareholders likewise as there are some village shareholders.

Mr. ROBERTS. Aside from the basic philosophical question of a communal settlement versus individual rights, and we have seen AFN come down on one side and the Department on the other side, is there or are there problems associated with having the regional

corporations hold a vote of this nature, an opt in vote? I am looking more at the practical side of things. Are there practical problems associated? For that matter, for both the villages and the regions, to hold a vote of this nature?

Ms. LEASK. I think in order to hold a vote you have to do the work in order to get your shareholders informed of what the decisions and all that they are making. And I think that the regional and village corporations would intend to do that regarding what any of the options that are provided in the bill, but I do think that there are problems to holding a vote within both the villages and the regions, and part of it just has to do with that lack of a structure that is there in order to get out and to inform their shareholders. I mean, granted, they are going to have to do that at some period of time, but in order to do that right away before 1991 I think would impose a lot of hardships both for the villages and the regions.

I might just also add on the prior question that you had asked regarding the differences between villages and regions, there are two regions right now whose shoulders both have merged. Their villages have merged with the regions, and those, there is really no difference between the village shareholders and the regional shareholders.

Mr. ROBERTS. All right. Has AFN or for that matter has the coalition done an analysis of the opinion that Mr. Britt referred to, the *Hodel v. Irving* and how that decision may or may not impact the 1991 legislation?

Ms. LEASK. We are aware of the decision. We have received the opinion, and I would like to—we just had an opportunity just briefly today to take a look at it, and I would just like to turn over to Don to respond to that.

Mr. MITCHELL. Mr. Chairman, basically as you know that decision was issued by the Supreme Court yesterday and everyone on this panel obtained it really just a short time before this hearing began. I have had a chance to skim it. I think that as the 1991 process continues, we keep getting additional curve balls, and certainly Justice O'Connor did not do us any service yesterday because she further confused an already convoluted issue to begin with. As a general matter it would seem to me that while that decision is certainly relevant to this project, it is not necessarily controlling. I think the Court is correct that even though the Congress has wide latitude over the control of Indian property, certainly that latitude is restricted by Fifth Amendment considerations, and I think the Court recognized that, but it is really not the same factual pattern.

In that case there was a property right that was actually being terminated in some fashion in a way that the Court thought was unfair, and that the time limit that the owner of this property right which would be the head right to the allotment interest to do something in the manner that was allowed by the statute that was thrown out yesterday, that that process was unfair to that individual person that owned that property. That is a little different in terms of destroying that property right as the penalty, which is what that statute did from really just sort of retooling the mix, and I think a better analogy would be the actions that Congress has

taken over the years with respect to making allotments restricted and unrestricted.

On many occasions Congress has said American Indian, here is your 160 acres whether you like it or not, and in 20 years the restrictions on your ability to sell that allotment and turn it into money by giving it to some non-native person will be realized, and then Congress has come in before that time period is up and has said, well, now, maybe that was a somewhat ill-considered decision, and has passed legislation extending the restrictions on out for another period of time with respect to that economic expectation, and certainly no one has ever questioned Congress's right to do that, and I do not think that there is any question that no one is taking property rights away even for a dissenter. That dissenter has the same share of stock, entitled to the same economic expectation that is represented by that share as any other shareholder. So the long and the short of it is that who knows whether I know what I am talking about, since none of us have ever had an opportunity to really review the opinion in depth, but AFN will certainly be happy to submit a more thoughtful analysis of the opinion for the Committee, if that is its indication of its will.

Mr. ROBERTS. I think that since we had a request for the Department to submit a written analysis, it would be appropriate for both AFN and the Coalition to also submit a written analysis of just exactly how that opinion plays with respect to the 1991 situation.

Ms. LEASK. Mr. Chairman, if I might also, during last year, during our testimony we did submit for the record as part of our testimony a paper on the constitutionality of the 1991 legislation and we intend to take a look at the recent Supreme Court decision and to see how it impacts that, if it does impact that paper, and we will get those results to you.

Mr. ROBERTS. Okay. Going back to the issue of the QTE and the disclaimer, is it appropriate to say that—and if we rely on the marble on the razor analogy, is it appropriate to say that with the QTE provision in the bill, that marble must tip one way or the other, that it is not possible to put it right squarely in the middle without a tilt?

Mr. BORBRIDGE. I think, if I may respond, I think it would be accurate to say that the present version of the QTE does not balance that normal. I would not like to say that that marble may not in fact be balanced in such a way that it would not fall against the interest of the tribal governments in Alaska, but at least the present version does not balance it.

Mr. ROBERTS. Let me pursue that a little bit, John. Do you not agree that the QTE authority provides an opportunity for a transfer of land to a tribal council or some other entity that can be easier done than what currently exists? Is that not accurate?

Mr. BORBRIDGE. That is accurate, yes.

Mr. ROBERTS. And it was Mr. Mitchell's statement that tribal ownership of land is one attribute that a court will look at in a legal argument on sovereign governmental authority. Is that not also accurate?

Mr. BORBRIDGE. I think that is not necessarily a determiner, but certainly a factor to be taken into consideration in the argument that you may not have Indian country.

Mr. ROBERTS. Well, then, in that case if the 1991 legislation changes current law to make it, for lack of a better term, easier to accomplish tribal ownership, then are we not left with a choice of saying now that we have tribal ownership by virtue of a change made to the law by the 1991 amendments, then you either have to prohibit an argument of tribal ownership or you have to grant an argument of tribal ownership.

Now, I am not aware of any way to strike a middle ground on that. If you use the QTE, you have tribal ownership. And then you are left with the dilemma of can that tribal ownership be used or not be used in a legal argument.

Mr. BORBRIDGE. I think part of the question I would suggest to you is that as indicated as one of the primary thrusts of this legislation, it is that it shall remain neutral on the issue of sovereignty, so that I would suggest that a balance is not only does it in fact make it easier, but does overcompensating for that ease of attaining what would be an argument, one element of an argument that there is Indian country, would overcompensation cause the provision to fall against tribal sovereignty, and therefore would it fail to be neutral at that point, you know. I want to hit both sides of the argument at the same point because we need to address both sides.

Mr. ROBERTS. Is it natural to say that we will provide an avenue through which it is easier to accomplish tribal ownership and then following that, using that avenue then you are permitted to argue tribal ownership to sovereignty. Now, if we go that route, have we not in fact changed the status quo and made it easier to argue tribal ownership in a sovereignty case?

Mr. BORBRIDGE. It certainly does not create the argument. We currently have that argument available to us under current law, so in terms of creating the argument or enhancing it, I, again giving you a layman's perspective here, and I want to qualify that. I do not pretend to be an attorney, you know, but giving you a layman's perspective here, it just strikes me that we are not creating anything new in terms of an argument. We are not by this legislation creating a right that we do not already have available to us to advance in terms of litigation that considers whether or not, you know, we have Indian country, and I think it is rather hard to look at the QTE provision and look at it solely in terms of how will this fall in a very narrow legal technical sense. I know there is a necessity of that, but again as a layman representing the coalition that all ties in with what the people have said they wanted in overwhelmingly powerful terms. We want the tribal option, and the QTE is a part of that tribal option, a response or an effort to respond to what the people have said strongly and overwhelmingly they want.

In terms of the legal niceties, we as a coalition have reached agreement with the Alaska Federation of Natives. Earlier there was some discussion about the natives getting together. They are together, and not only together, but they have drafted a bill, and that bill in my view spells out what we want and what we consider to be a fair answer to these matters.

Mr. ROBERTS. Is it safe to say that you have not reached an agreement with the State of Alaska whose jurisdiction would be primarily affected by any sort of sovereignty arguments that you

would make? You have not reached an agreement with the State of Alaska on this QTE disclaimer issue, have you?

Mr. BORBRIDGE. What I was addressing was that earlier there was a question with respect to the natives. There the answer is yes. And now you are asking separately about the State, and certainly we take exception to several matters that they have advanced such as their agreement and the support of the disclaimer language in S. 1145.

I did want to conclude, however, that is not to say that we have not in fact reached agreement with the State on a number of elements. The fact is, we have.

Mr. MITCHELL. Mr. Chairman, I just wanted to suggest that perhaps part of the confusion as to what the policy choice is that is before the Committee with respect to the disclaimer issue is that, as I understand the native community's concern, there be neutrality and a result, and if I understood the Chair's question, the question presupposes that there has to be neutrality with respect to process. I think that is why both of those propositions keep sort of crossing in the night. How you end up with an IRA council owning ANCSA corporation lands is really irrelevant since they can do it anyway and they are then entitled to make the argument? So a result-oriented analysis would lead you to—on the other hand, if you take the approach that there has to be procedural neutrality, which is what I just heard the Chair describing, which is certainly a legitimate approach, then obviously should the Congress, as a policy matter, make the process easier to get to exactly the same result? That is really the issue you have to resolve and that is why I think that there has been such a lack of resolution and a lack of understanding really of what the policy issue really is. I do not know if that is helpful at all.

Mr. ROBERTS. I think it is helpful, and I think it is exactly accurate. I would not say that from the perspective of Senator Murkowski he has viewed it as neutrality in result only.

Are there any other comments from any other members of the panel with respect to this?

Mr. BORBRIDGE. May I just make a brief comment? That is, we often talk about 1991 without asking why was it that there was imposed as a provision in the 1971 Settlement Act the restriction on the alienation for a period of 20 years, and the thinking of the Congress at the time was that they wanted the natives to be pulled into the westernized institutional world of corporations, and the theory was that given a period of 20 years there would be the opportunity on the part of the natives to become sophisticated in business judgment so that when they could in fact sell the stock they would have the experience of having operated their corporations.

I would like to point out, however, that in fact the final payment of money was not made to the ANCSA corporations until, I think it was eleven years after passage of the Act. As of this day, in fact, there has not been completed the transfer of title to land. Not only that, but a BLM spokesman had suggested a while earlier that it might take 40 years to do that. There has also been extensive litigation. I will not exhaust this topic other than to ask why refer to this? I refer to this because the Secretary of Interior and his

spokesmen have pointed to the fact that they do not feel that the rule should be changed, that the intent of the Act should not be changed.

What I am saying here, there are in fact considerations that have not been looked at seriously enough, and I feel that the native corporations have had to function, paying out a great deal for litigation, and they have not in fact had 10 years in which to form the experience as the basis for business judgments that they would then be able to make both institutionally and as shareholders in 1991. And I just wanted to mention that because having been present in 1981, that was one of the chief justifications of why there would be restrictions on the alienation of stock. We have not had a fair 20 years, is what I am saying.

Mr. ROBERTS. I think that is a good point, John. The Senator asked me after Mr. Britt had left whether the Department's view was that ANCSA was a one-shot affair, or whether it was, in the words of Senator Stevens, I believe, a living document. I think that is an essential question in this whole process, and we will submit that question to the Department in writing to get their answer to that.

Ms. LEASK. Mr. Chairman, just to reiterate our commitment, we will provide the Committee with the technical comments on the draft and the Senate draft as well as the constitutional questions raised by the *Hodel v. Irving* case. What we will also do is prepare an analysis as well of the Department of Interior testimony, and we will get that to you in the next couple of weeks.

If we might just for a minute just make a couple of brief comments regarding the Alaska land bank and the provision that is included,

[The information follows:]

ALASKA FEDERATION OF NATIVES, INC.

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June 1, 1987

Honorable Dale Bumpers
Chairman, Subcommittee on
Public Lands, National
Parks and Forests
Committee on Energy and Natural
Resources
United States Senate
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

During the subcommittee hearing on H.R. 278 and S. 1145 held on May 19, 1987, Senator Murkowski requested the Alaska Federation of Natives (AFN) to submit supplemental testimony responding to the testimony Mr. Steven Britt presented on behalf of Secretary Hodel opposing the enactment of both bills. In particular, Senator Murkowski requested AFN to comment on Hodel v. Irving, the recent United States Supreme Court decision holding that section 207 of the Indian Land Consolidation Act violates the Takings Clause of the United States Constitution.

In response to those requests, enclosed please find a copy of AFN's supplemental testimony on H.R. 278 and S. 1145 which, on behalf of AFN, I would request be made a part of the official record of the hearing and printed in the record in full.

Sincerely,

Janie Leask
President

xc: Honorable Frank Murkowski
Donald Hodel

Enclosure

Integrity • Pride in Heritage • Progress

SUPPLEMENTAL TESTIMONY OF THE ALASKA FEDERATION OF NATIVES
ON S. 1145 AND H.R. 278

On May 19, 1987, the Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 1145 and H.R. 278, different versions of legislation to amend the Alaska Native Claims Settlement Act prior to December 18, 1991, when, if the Act is not amended, restrictions on the sale of Native corporation stock will terminate. With one exception, all of the witnesses who testified at the hearing supported the expeditious enactment of legislation. The exception was Steven Britt, Assistant to the Secretary of the Interior for Congressional and Legislative Affairs. On behalf of Secretary of the Interior Donald Hodel, Mr. Britt testified in opposition to the enactment of S. 1145 and H.R. 278 in any form.

In response to Mr. Britt's testimony, Senator Murkowski requested the Alaska Federation of Natives (AFN) to submit its views on Secretary Hodel's opposition to S. 1145 and H.R. 278. AFN's views on the major objections to the legislation Mr. Britt identified on Secretary Hodel's behalf are as follows:

Continuation Of Restrictions On The Sale Of
Native Corporation Stock.

Unlike the members of the House of Representatives who voted for H.R. 278 and the other parties who testified at the May 19, 1987 hearing, Secretary Hodel simply does not believe that continued Native ownership of Native land will be placed at substantial risk if restrictions on the sale of stock in Native

corporations are permitted to terminate without an affirmative vote of the shareholders. According to Mr. Britt, "some have expressed concern that unrestricted sale of Native stock could result in widespread loss of Native lands and rights through loss of ownership and control of these corporations." The fact of the matter is that the threat to Native ownership of Native land posed by the termination of restrictions on the sale of stock is not a concern of "some" Alaska Natives, it is a concern of all Alaska Natives. Although they have differing views as to how best to solve the problem, for almost half a decade the delegates who have attended the annual AFN conventions - delegates who are shareholders of every Native village and regional corporation in Alaska - have repeatedly said that, based on their experience, they believe that if restrictions on the sale of Native corporation stock are allowed to terminate, over time Alaska Natives will lose their land. Steve Cowper, the Governor of Alaska, is of a similar mind.¹

If Secretary Hodel's assessment of the situation is correct, then AFN agrees that the enactment of 1991 legislation is not necessary. But if Secretary Hodel is wrong, not enacting 1991 legislation would be unconscionable.

¹See Testimony of John W. Katz (May 19, 1987)("[W]e [i.e., the State of Alaska] are concerned that Native corporations established under the Act not find themselves in a position where they might lose their land because of the expiration of certain protections which have been operative since 1971.").

At its core, Secretary Hodel's objection to extending restrictions on the sale of Native corporation stock until a majority of shareholders vote to terminate the restrictions is grounded on his concern that continuing the restrictions will "create an unfair abridgement of individual Native shareholder rights and expectations."

In evaluating the merits of Secretary Hodel's objection, the subcommittee should consider two questions: As a policy matter is, as Secretary Hodel alleges, extending restrictions on the sale of Native corporation stock truly "an unfair abridgement" of individual rights? If it is not, is an extension unlawful?

AFN believes that the answer to both questions is no. As a threshold matter, if extending restrictions on the sale of Native corporation stock is so inherently unfair, why have the shareholders whose interests Secretary Hodel purports to represent not informed the subcommittee that they oppose the enactment of 1991 legislation? In 1986 the subcommittee held hearings at three locations in Alaska.² In addition to the witnesses who presented oral testimony, the subcommittee afforded every Native corporation shareholder an opportunity to present written testimony informing the subcommittee of his or her views

²Hearing on S. 2065 (To Amend The Alaska Native Claims Settlement Act) before the Subcomm. on Public Lands, Reserved Water and Resource Conservation of the Senate Comm. on Energy and Natural Resources, 99th Cong., 2d Sess. (May 24 and 27, July 10, 1986).

on the legislation. Yet with two exceptions³ (including one witness who opposed the purported infringement of individual rights only to the extent that shareholders are not afforded an opportunity to vote on the legislation prior to its enactment into law), every Alaska Native with an opinion on the matter testified in favor on the legislation.

And for good reason. Unlike Secretary Hodel, Alaska Natives familiar with the facts of the matter understand that if the Congress permits the restrictions on the sale of Native corporation stock to terminate automatically, Alaska Natives will eventually lose their corporations, and that when they lose their corporations, they will lose their land.

They also realize that the enactment of 1991 legislation will not "unfairly" abridge the rights of the de minimis number of shareholders who may want restrictions on the sale of their Native corporation stock to terminate. Such shareholders will have the same rights and the same ownership interest as all other shareholders of the corporations in which the own stock, including the right to use the land that is each corporation's most important asset and the right to receive cash dividends. When a majority of a corporation's shareholders vote to terminate restrictions on the sale of their stock, all shareholders will have the same opportunity to sell their stock.

³Id. at 470, 530 (statements of Robert W. Rude and Maria Coleman).

And if a majority of shareholders vote to have their corporation transfer title to its land to a nonprofit corporation or IRA council, both S. 1145 and H.R. 278 prohibit a corporation from doing so unless all shareholders, including shareholders who oppose the transfer, are afforded an ownership interest in the transferee entity.

By any reasonable standard of measure, the aforementioned guarantees protect, rather than "unfairly abridge," the rights of all Native corporation shareholders, Native and nonNative and majority and minority shareholders alike.

It also should be noted that Secretary Hodel indicates that, in his judgment, extending restrictions on the sale of Native corporation stock until the restrictions are terminated by a majority vote of the shareholders "is inconsistent with the express, ultimate goal of self-determination for Alaska Natives." What the Secretary's analysis disregards is that informed choice is the essence of self-determination. Under the so-called "opt-out" approach he opposes, continued Native ownership of Native land is protected until Alaska Natives purposely and knowingly vote to place the land at risk by terminating restrictions on the sale of the stock that denotes each Natives' ownership interest. This, rather than losing Native corporation land the same way Indians on reservations in the coterminous states lost their land when restrictions on the sale of their allotments automatically terminated, is the essence of Native self-determination.

Indian Legislation

Secretary Hodel objects to section 2(e) of H.R. 278 and section 2(8) of S. 1145 that declare that ANCSA and the 1991 amendments are "Indian legislation" on the ground that that finding and the finding that restrictions on the sale of Native corporation stock should not terminate automatically "could place the Federal Government into an unwanted paternalistic role with regard to Alaska Natives, and open the door to a continuing, inextricable dependency relationship."

The objection demonstrates a disturbing lack of understanding of the legal effect of designating a statute as "Indian legislation." The designation of ANCSA and 1991 legislation as "Indian legislation" does not create an "unwanted paternalistic role" for the federal government. Nor does it establish new precedent. The designation simply codifies existing law. At least three federal courts have held that ANCSA is "Indian legislation." See Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664, 667 (D. Alaska 1977). Because ANCSA is "Indian legislation," any ambiguity in its text must be resolved in favor of Alaska Natives. This well recognized rule of statutory construction hardly creates a paternalistic role or "a continuing, inextricable dependency relationship." Rather, it is needed to ensure that the Department of the Interior implements ANCSA and the 1991 amendments in a manner that fairly benefits the legislation's intended beneficiaries: the Alaska Native people. Indeed, Secretary Hodel's predecessors' refusal

to implement ANCSA in a manner consistent with this blackletter rule of Indian law was a primary cause of many of administrative abuses and much of the unnecessary litigation that diminished the monetary value of the settlement and unjustifiably delayed the selection and conveyance of land to Native corporations.

The Issuance Of Additional Stock

Secretary Hodel objects to sections of S. 1145 that authorize the shareholders of a Native corporation to issue new shares and classes of stock in addition to the restricted shares that have already been issued. Somehow this new stock will "create a maze of restricted stock" that will be "too restrictive to ensure a true market value for the corporate stock." In fact these sections have been developed by Native corporations to produce exactly the opposite result. The purpose of authorizing Native corporations to issue new shares and classes of stock is to enable the shareholders of each corporation to develop a stock ownership plan that maximizes the benefits of the settlement as they - rather than the Secretary - deem appropriate. This is the essence of Native self-determination, a policy which Secretary Hodel has indicated in the past that he firmly supports. As the Secretary has noted in his testimony, some corporations - CIRI being a good example - have large numbers of shareholders who do not live in villages, many of whom do not even live within the corporation's geographic boundaries. Other corporations - particularly small village corporations - have shareholders who all live in the same community. The provisions to which the

Secretary objects authorize the shareholders of each corporation to decide for themselves how their land and other assets should be owned and used. For large, urban regional corporations creating different classes of stock - some classes of which may have voting rights, guaranteed dividends or alienability restrictions that other classes do not - will maximize continued Native ownership, land protection and economic value. For small village corporations whose major asset is land village residents use for subsistence purposes, issuing new stock to young people will ensure that the entire community will continue to benefit from the use of the corporation's major asset.

The Secretary's conclusion that the provisions to which he objects will be "too restrictive to ensure a true market value for the corporate stock" overlooks the fact that different classes of stock that together form stock ownership patterns of considerably greater complexity than the stock ownership patterns authorized by S. 1145 are traded daily on the New York and other stock exchanges and that such stock ownership patterns assist, rather than hinder, shareholders who aspire to realize economic value.

Valuation Of Corporate Assets And
Denial Of The Right Of Non-Native
Shareholders To Vote

If a majority of shareholders vote to allow dissenting shareholders to leave the corporation, valuing the corporation's stock as restricted stock and deducting the value of subsistence lands and lands of unknown and speculative value from the value

of the corporation's assets not only does not unfairly abridge minority shareholder rights, to do otherwise would give minority shareholders an undeserved windfall. In particular, not excluding the value of subsistence lands would enable minority shareholders to transform an asset with no cash value into cash at the expense of the majority.

Secretary Hodel's opposition to authorizing the shareholders to prohibit non-Native shareholders from voting Native corporation stock is similarly flawed. What the Secretary's opposition overlooks is that the Congress has already decided the matter. More than half a decade ago Congress evaluated the merits of this proposal and amended ANCSA to permit shareholders to amend their corporation's articles of incorporation to prohibit non-Natives from voting corporation stock.⁴

Transfer Of Land From A Native
Corporation To Another Entity

Both H.R. 278 and S. 1145 contain sections that facilitate the transfer of land from a Native corporation to a "qualified transferee entity" in instances in which a majority of the shareholders vote for the corporation to make the transfer. Secretary Hodel erroneously indicates that the purpose of the aforementioned sections is "to encourage the creation of tribal communities with power and control over the land and other assets." In fact, the qualified transferee entity section neither enlarges nor diminishes the aspirations of the residents

⁴Section 1401(a), Pub. L. No. 96-487 (December 2, 1980).

of Native villages to exercise powers of self-government. Rather, the purpose of the section is simply to assist the shareholders of Native corporations - particularly the shareholders of corporations in rural villages - to transfer legal title to village lands to a form of social organization other than the business corporation.

As graphically described in Village Journey, the report of the Alaska Native Review Commission, the for-profit corporation is ill-adapted to the reality of life in many rural villages. The testimony on 1991 legislation village people presented to both the 99th and 100th Congress substantiates the Commission's conclusion. A reality section 2(b) of H.R. 278 and section 8(4) of S. 1145 both acknowledge.

If 1991 legislation is not enacted, pursuant to Alaska law, Native corporations will still have the legal power to transfer title to their land to a nonprofit corporation, IRA or traditional Native council or other entity organized under the laws of the State of Alaska or of the United States. And the nonprofit corporation, IRA or traditional Native council will still have the legal power to accept and hold title to the land transferred. The qualified transferee entity section simply simplifies the transfer process. Contrary to the Secretary's opinion, it does not convert ANCSA into "a reservation-type system." Whether the State of Alaska does or does not have regulatory jurisdiction over fee land surrounding, or owned by the governing body of, a Native village is a question of law that

has yet to be decided. But it is a legal controversy that will be decided regardless of whether the version of H.R. 278 or S. 1145 enacted into law does or does not include a section facilitating land transfers to qualified transferee entities: a legal controversy that, regardless of its outcome, should not be allowed to hinder Native corporations from transferring village lands to membership organizations that can include young Natives born after December 18, 1971 as members, that can dispense with the costs of stock maintenance, and that can hold legal title to village lands for reasons other than profit.

The Land Bank

Secretary Hodel objects to the provisions of H.R. 278 and S. 1145 that automatically extend the protections of section 907 of ANILCA (the Alaska Land Bank Program) to undeveloped Native corporation land. The sole reason he articulates for doing so is that he believes that affording Native corporation land automatic protection from the risk of involuntary loss "eliminates the requirement [in section 907] that Native landowners manage their land compatible with the adjoining Federal estate."

This argument is not well-founded in at least two significant respects. First, in the six and one half years of its existence the recalcitrance of the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS) (agencies under the Secretary's jurisdiction) has been the primary reason that, to date, the Alaska Land Bank Program has been a failure. Second, since section 907(b)(3) of ANILCA prohibits FWS and NPS

from withholding a land bank agreement because a Native corporation refuses to open its lands to public use and enjoyment, as a practical matter the difference between a Native corporation agreeing not to develop its land and agreeing to manage its land in a manner compatible with the adjoining federal estate is nonexistent. If there is a difference at all, it is a difference too de minimis to keep Native, particularly village, corporation land at risk. The automatic extension of land bank protection advances the interest of Native corporations in land protection and advances the interest of the federal government in ensuring that Native corporation land of national and international significance as wildlife habitat is not developed irresponsibly by creditors and bankruptcy judges.

Exemption Of Dividends From
Federal Benefit Programs

The Secretary objects to exempting dividends and other income derived from Native corporation stock and ANCSA assets from being counted as income for the purposes of determining a shareholder's eligibility for food stamps, social security and other federal programs. However, the Secretary's testimony fails to mention that Congress has exempted income derived from other Indian settlements and that, if enacted into law, section 17 of S. 1145 will limit the exemption to \$ 2,000 - a limitation that balances the interests of recipients of Indian settlements against the interests of the federal government in a fair manner which finds substantial precedent in prior Indian settlements.

Constitutionality

Lastly, Secretary Hodel objects to H.R. 278 and S. 1145 on the ground that extending restrictions on the sale of Native corporation stock may be unconstitutional. In response to the same objection made during the previous Congress, AFN submitted a detailed legal memorandum that concluded that extending restrictions on the sale of Native corporation stock until such time as the shareholders of a Native corporation vote to terminate the restrictions is constitutional.⁵

The Secretary now implies that the holding in Hodel v. Irving, a decision the United States Supreme Court issued several days ago, may have altered this result. For the reasons set forth below, neither Hodel v. Irving or Keystone Bituminous Coal Ass'n v. DeBenedictis,⁶ a decision the United States Supreme Court issued last March, support the Secretary's conclusion.

The central conclusion of the legal memorandum AFN submitted to the subcommittee during the 99th Congress was stated as follows:

⁵Hearing on S. 2065 (To Amend The Alaska Native Claims Settlement Act) before the Subcomm. on Public Lands, Reserved Water and Resource Conservation of the Senate Comm. on Energy and Natural Resources, 99th Cong., 2d Sess. 111-151 (August 4, 1986) (hereinafter "August Hearing").

⁶107 S.Ct. 1232 (1987).

In analyzing the constitutionality of the AFN proposals, it bears emphasis that the Supreme Court has stated there is no talismanic test for constitutionality and that each case is determined by its own unique facts. This principle necessarily means there is no definitive answer to the constitutionality debate short of an actual decision by a court. Nonetheless, analysis of the proposals in light of the Supreme Court's decisions shows that the argument in favor of constitutionality is quite strong.⁷

Neither Keystone nor Hodel change that assessment. In fact, both decisions re-affirm the validity of the analysis used in the AFN memorandum, and the memorandum's conclusion that extending restrictions on the sale of Native corporation stock is constitutional.

The AFN memorandum cited Pennsylvania Coal Co. v. Mahon⁸ as one example of cases in which the United States Supreme Court has struck down laws which "so limited the value of . . . property as to amount to an effective taking."⁹ In Pennsylvania Coal a statute prohibited owners of certain coal interests from mining coal because the mining would deprive other property owners of lateral or surface support and could cause subsidence damage. The Court, in an opinion authored by Justice Holmes, concluded that the statute in effect "took" the coal owners' property for a public purpose, without compensation, and was thus unconstitutional. The regulatory effect of the law was to

⁷August Hearing at 131.

⁸260 U.S. 393 (1922).

⁹August Hearing at 128.

deprive the owners of the ability to mine the coal, and the mining of the coal was equated with the property interest itself.

In Keystone Bituminous Coal Ass'n v. DeBenedictis, the United States Supreme Court considered a 1966 Pennsylvania statute which also prohibited owners of coal interests from mining coal in certain circumstances, again because the could cause subsidence damage. Five members of the Court concluded the 1966 statute was a valid exercise of the Pennsylvania legislature's power to protect the public interest; the four dissenters felt the case was indistinguishable from Pennsylvania Coal and would have declared the 1966 statute unconstitutional.

The significance of Keystone for purposes of considering the constitutionality of a statute extending restrictions on the sale of Native corporation stock is that it re-affirmed the basic constitutional principle that decisions under the Takings Clause of the 5th Amendment are controlled by close factual analysis of the government's purposes, the public interest sought to be served, and the effect of the action on the specific property interests involved, i.e., "the nature of the State's action is critical in takings analysis."¹⁰

The majority in Keystone concluded that the 1966 Pennsylvania statute was supported by an extensive legislative record that showed why the law furthered an important public interest, while the legislative record for the statute struck

¹⁰Keystone, supra at 1244.

down in Pennsylvania Coal showed that the primary purpose of that statute was to protect the property interests of certain private owners at the expense of others.¹¹

The relevance of that distinction to the constitutionality of a statute extending restrictions on the sale of Native corporation stock is clear; if the Congress articulates a clear, cogent, and well-documented public purpose to be served by extending the restrictions, legislation doing so is far more likely to be upheld by the courts as a valid exercise of congressional power.

Keystone also supports the constitutionality of a statute extending restrictions on the sale of Native corporation stock because it followed the same analysis as that used in Andrus v. Allard¹² and Penn Central Trans. Co. v. New York City,¹³ decisions relied upon in the AFN memorandum. Five Justices joined an opinion which drew upon Andrus for support. In addition, Keystone re-affirmed the principles that whether a statute violates the Takings Clause depends in part on the extent to which it results in a "significant" diminution of value and interferes with "investment-backed expectations."¹⁴ Principles on which the conclusion in the AFN memorandum relied.

Hodel v. Irving held that section 207 of the Indian Land

¹¹Id. at 1240-46.

¹²444 U.S. 51 (1979).

¹³438 U.S. 104 (1978).

¹⁴Keystone, supra at 1246-51.

Consolidation Act violated the Takings Clause. Section 207 required undivided fractional interests in Indian allotments which represented less than 2% of an allotment and which generated revenue of less than \$ 100 per year to escheat to the tribe. Seven Justices joined an opinion that applied the Takings Clause analysis previously applied in Penn Central and other cases. In doing so, the Court repeated Chief Justice Rehnquist's succinct statement of the general jurisprudence of the Takings Clause:

[T]his Court has generally "been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons" . . . Rather, it has examined the "taking" question by engaging in essentially ad hoc, factual inquiries that have identified several factors -- such as the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action -- that have particular significance.

The Justices accepted several of the arguments advanced in the AFN memorandum. Thus the Court agreed that individual Indians who, but for section 207, may have inherited the property that escheated did not have "investment-backed expectations" in the property because the prior owners had acquired their interest through gift, descent or devise, and the property had been held in trust for 100 years. Similarly, Native corporation stock has been acquired through ANCSA, by inheritance or pursuant to a divorce decree, and not by investment or purchase.

After describing the effect of section 207 and noting the Congress' "broad authority" to regulate Indian affairs, the Hodel Court concluded that although it "might well find [section 207] constitutional," it could not do so because the statute "went too far" by prohibiting transfers of small allotment interests even to the owner of other fractional interests. In other words, section 207 prohibited transfers by devise or descent in instances in which a transfer would promote the consolidation of ownership which was the goal the Indian Land Consolidation Act had been enacted to advance. The Court felt that it did not make sense to prohibit such transfers. Indeed, the Court clearly stated that the factor that made section 207 unconstitutional was not mandatory escheat, but the "overbreadth" in prohibiting transfers that furthered the consolidation of allotment interests. The Court stated:

[S]urely it is permissible for the United States to prevent the owners of such interests from further subdividing them among future heirs on pain of escheat . . . It may be appropriate to minimize further compounding of the problem by abolishing the descent of such interests by rules of intestacy, thereby forcing the owners to formally designate an heir to prevent escheat to the Tribe. What is certainly not appropriate is to take the extraordinary step of abolishing both descent and devise of these property interests even when the passing of the property to the heir might result in consolidation of property. (Emphasis added).

Thus, the Court did not hold that mandatory escheat was unconstitutional. Rather, the Court held that mandatory escheat that went further than necessary to fulfill a legitimate federal

interest was unconstitutional.

The Hodel holding is quite narrow, a fact that must be kept in mind when analyzing the decision's impact on the debate surrounding the constitutionality of a statute extending restrictions on the sale of Native corporation stock. There may be a tendency for persons who oppose extending the restrictions as a matter of policy to over-simplify the decision and over-state the holding in order to conclude that, based on Hodel, a statute extending restrictions on the sale of Native corporation stock would violate the Takings Clause.

Such a conclusion would ignore the distinction between an overbroad statute such as section 207 that unnecessarily destroys an existing property interest and a statute that extends existing restrictions on the sale of Native corporation stock in a manner carefully crafted to carry out a valid federal purpose, i.e., enabling Alaska Natives to protect their ownership and control of the land and other benefits of their claims settlement.

Although the Hodel Court discussed the history of American Indians in explaining the background for its decision, it did not discuss the cases on which the AFN memorandum relies to reach the conclusion that a statute extending restrictions on the sale of Native corporation stock would not violate the Takings Clause, particularly Tiger v. Western Investment Co.¹⁵ and Brader v. James,¹⁶ cases that upheld the power of Congress to extend a

¹⁵221 U.S. 286 (1911).

¹⁶246 U.S. 88 (1918).

James,¹⁶ cases that upheld the power of Congress to extend a restraint on alienation imposed as part of an Indian settlement. As these cases demonstrate, statutes extending restraints on the alienation of Indian property are a relatively common part of Indian settlements. Destroying the rights of descent and distribution are not. Thus, a statute that extends restrictions on the sale of Native corporation stock fits into the mainstream of established constitutional law in the context of Indian settlements while the statute invalidated in Hodel had no such established foundation in Supreme Court precedents.

In a concurring opinion, two Hodel Justices found that section 207 violated the Takings Clause because Congress failed to provide owners of fractional allotment property interests a reasonable opportunity to avoid escheat by transferring their interests during their lifetimes. After reviewing the legislative history of the Indian Land Consolidation Act, Justice Stevens, who wrote the concurring opinion, concluded that section 207 had been added to the statute at the last minute with "abruptness and lack of explanation."

The lack of significant legislative history explaining why the Congress thought adding section 207 to the Act was necessary obviously contributed to the result in Hodel, just as the absence of a demonstrated public purpose for the statute invalidated in Pennsylvania Coal was seized upon by the majority in Keystone to distinguish the Keystone holding from Pennsylvania Coal.

¹⁶246 U.S. 88 (1918).

Consequently, Hodel and Keystone both illustrate the importance of legislative history to the Court's analysis of the constitutionality of federal statutes alleged to violate the Takings Clause. As occurred in Keystone, a well-documented explanation of the federal interest advanced by, and the practical necessity for, a statute can render an otherwise invalid statute constitutional while, as occurred in Hodel, the absence of a meaningful explanation can contribute to the invalidation of a statute that seeks to advance an otherwise permissible goal.

In conclusion, several features distinguish the statute invalidated in Hodel from a statute extending restrictions on the sale of Native corporation stock. First, the latter statute would extend existing restrictions on the transfer of Indian property rather than imposing a new restriction on the transfer of property that has previously been unrestricted. Second, statutes extending restrictions on the sale of Indian property are fairly common while statutes such as section 207 of the Indian Lands Consolidation Act are a novel means of handling Indian property. Third, if the type of statute AFN supports is enacted, whether, and for how long, a Native corporation's stock should remain restricted is a shareholder decision. ~~Section~~ 207 imposed its escheat provision on Indian property without regard to the preferences of the affected Indians. Fourth, AFN's proposed statute would authorize the shareholders of each Native corporation to provide dissenters' rights to shareholders who

oppose extending the restrictions on the sale of the corporation's stock. Section 207 contained no such provision. However, the Hodel Court intimated that a 1984 amendment to section 207 which added such a provision may be constitutional. Finally, a statute extending restrictions on the sale of Native corporation stock would be no broader than necessary to solve the problem the statute is intended to address and would be narrowly tailored to meet the important and permissible government objective of safeguarding the land and other benefits of the Native claims settlement.

For all of the reasons set forth above, the Hodel decision does not affect the conclusion in the AFN memorandum that a statute extending restrictions on the sale of Native corporation stock until the restrictions are lifted by an affirmative vote of the shareholders is constitutional.

Mr. MITCHELL. Mr. Chairman, the land bank is not discussed in AFN's written testimony, but since I have had a chance to review very briefly the written testimony to be submitted by the Sierra Club in the next panel or the panel after that, I thought it would be worthwhile to put AFN's views about that matter on the record.

As I read the Sierra Club testimony, it indicates that it is opposed to the automatic extension of land bank protections for undeveloped native land, that in other words unless each of the 180 village corporations separately negotiate, whether it is a model agreement or some new agreement, but an agreement with the Federal Government, that if they do not do that, that their land should be placed at risk. And I think it is worth pointing out that at least AFN believes that that policy position by the Sierra Club is very pennywise and pound foolish. As you know, the native community has been conveyed some of the most valuable wildlife habitat in the North American continent, and at this time the Department of the Interior has certainly entered some discussions about trying to get some of it back because it views it as so valuable. And the reason that the land bank extension has been made automatic is because the people that need it most are the people that will not be able to get it under the present rules.

Obviously, the NANA corporation or the Sealaska Corporation or Sery or any of the regional corporations can certainly hire people like me to go to meetings with the Fish and Wildlife Service to get any kind of an agreement to protect the land before 1991 under the present setup, and so can certain village corporations that are sophisticated such as a Clutna or the Kotsop Village Corporation or any of those that are sort of in the mainstream of being active village corporations, but you have got 180 village corporations out there that own 44 million acres of land, and obviously from an environmental point of view the best thing that can happen to that land is absolutely nothing.

And that is what the amendment in the 1991 bill attempts to ensure. Those are the people that will not have the money, will not have the sophistication, will not even know who to write the letter to or where to phone to start the land bank negotiation process, and those are the people whose lands can be taken by banks and by taxation and by other ways, and which is more preferable in the environmental public interest, to have nothing done with that land by native people living in their own villages, or to have development decisions made by absentee creditors in bank buildings in Seattle that might be interested in doing whatever can get them 10 or 20 cents on the dollar with respect to recovering a bad debt from what it believes is an asset.

And it is just very difficult to understand from an environmental point of view how encouraging and ensuring that undeveloped native land that is valuable wildlife habitat will not be automatically protected, and frankly, it is somewhat befuddling as to why the Sierra Club has taken that position, but certainly AFN believes that it is not well considered, and that both the interests of the native community and the interests of the environment are best served by the effort that AFN has gone to go provide that automatic protection.

Mr. ROBERTS. Thank you, Don.

Senator MURKOWSKI. I understand that the questions have been asked for the record, and I want to thank the panel and wish you all a good afternoon. I might add that we are hosting a little reception for visitors from out of town who are here to either participate or testify in our office from about 5:30 until about 7:00, and we are also including those that are testifying over in the House today on the Tongass bill, so some of your friends and acquaintances will be there, so we invite you again to be with us. Thanks for your testimony.

We will call on the next panel, Panel Number Two, Chris McNeil, vice president of Sealaska Corporation, Mr. Roy Huhndorf, president of the Cook Inlet Regional Corporation, and Mr. Donald F. Neilsen, senior vice president, Bristol Bay Regional Corporation.

We also have a late request, two additional witnesses that I—no, excuse me, just one that I am going to ask join us now, Mr. Joe Chythlook of Bristol Bay Native Corporation, village representative to the AFN and president of Aleknigik Village Corporation from Dillingham. You can join either—balance it and go down to the other end, Joe.

Okay, we can proceed in any manner you wish. Chris, you are first on my list. It is up to you folks.

**STATEMENT OF CHRIS McNEIL, JR., SENIOR VICE PRESIDENT,
SEALASKA CORP.**

Mr. McNEIL. Thank you, Mr. Chairman, ladies and gentlemen. Senator MURKOWSKI. Please proceed, Chris.

Mr. McNEIL. I am Chris McNeil, Jr., senior vice president of Sealaska Corporation. I am pleased to have the opportunity to be here today to testify on the 1991 amendments to the Alaska Native Claims Settlement Act. I would also like to thank the Chairman for taking the time to have this hearing, and I know that the agenda is very full and difficult to meet this time.

With the following exception, Sealaska concurs with the Alaska Federation of Natives draft of the 1991 amendments, and Sealaska recommends the expeditious enactment of the 1991 amendments. There are several provisions of which I would like to give short and particular emphasis. The first is concerning ANCSA corporate reorganizations.

There are several methods which have been proposed in the AFN bill which would allow ANCSA corporations to be more viable participants in capital markets, thus still permitting the ANCSA corporations to maintain their unique native character. One method proposed is a recapitalization plan in which the capital structure of the regional corporation could be restructured. Sealaska, on the other hand, proposes 1991 amendments which would restructure its assets. It seeks amendments to ANCSA which would affirmatively and flexibly permit regional corporations to restructure its assets and permit certain transactional tax immunities to protect the transfer.

This would permit Sealaska to retain 100 percent Alaska native ownership of the regional corporation and still permit the participation of certain of its subsidiaries or other business entities in the open market on a discrete basis. In Sealaska's view this asset re-

structuring would permitted planned and limited liquidity to shareholders of the regional corporation while retaining native ownership and control the regional corporation.

For example, under this plan it would allow a regional corporation to dividend out alienable stock in one of its subsidiary corporations or entities while still retaining the stock of the regional corporation in a restricted status, as it is now. This would authorize restructuring of regional corporation assets. It would also have the significant added benefit of permitting the restructured business entities to participate in the equities market, and these entities would be valued in pure economic terms to its shareholders.

If the business entity is successful, it will have significantly greater capital available to it than the regional corporations have under current circumstances. The draft language for this is attached to my testimony, Mr. Chairman.

Senator MURKOWSKI. It will be so noted.

Mr. McNEIL. Thank you. There are several other provisions of which I would like to give short comment.

Senator MURKOWSKI. Please proceed.

Mr. McNEIL. First, Sealaska very much favors the section dealing with eligibility for Federal programs. This protects certain ANCSA corporation distributions to its shareholders from being counted as an asset for government benefit programs. It will avoid that situation where ANCSA corporations give with one hand and the Federal government takes it away with the other. It would permit benefit to those natives who need it most.

Secondly, we have a proposal for a shareholder preference in employment. This provision would clarify existing law and clearly establish a policy of shareholder preference in employment for ANCSA corporation shareholders.

Third, minority business status. This proposal would clarify that ANCSA corporations are minority owned businesses for purposes of implementing Federal SBA standards.

Fourth, a shareholder homesite program. We propose a provision which would make a shareholder homesite program authority applicable to regional and urban corporations in addition to the existing authority for village corporations. This is a very popular concept among Sealaska shareholders.

And finally, the Alaska native fund distribution pool. This concept would clarify that ANCSA establish an Alaska Native fund distribution pool at its inception, and that the remaining end distributed balance of such Alaska native funds will continue to retain the Alaska native fund protections until the funds are exhausted.

Mr. Chairman, I would like to make just a couple of other remarks concerning the question of individual rights that was discussed here earlier, and I really have concern about that. There is a focus on this denial of individual rights, and I think the focus really was as to this generation. We look at this in terms of other generations and the generations yet unborn, and we are concerned about their rights, because there is a dynamic that will go here, and we think that the people who are better off will get better off, and those who are less well off will become poorer, and we think what is likely to happen is that the poorer shareholders will sell

their stock and there really will not be anything for their children. We have to ask a question about what about their individual rights. You know, their legacy really could end up being nothing.

We think the proposition is really relatively straightforward and simple, and we would like to just assure that in the future generations that there is something for all of the children.

I would also like to note I read a little bit in the testimony that the Department of Interior had taken the position that perhaps this was also an issue of corporation control, and I do not believe that——

Senator MURKOWSKI. I am sorry, I did not hear. Corporation what?

Mr. McNEIL. The Interior took the position that the dissenters' rights was associated with than issue of corporation control, that it was intended in some way to vest existing management. And I do not believe that it is that kind of case because because of all kinds of other mechanisms, and certainly in this atmosphere of aggressive corporate takeovers there are all kinds of proposals that could be stated which would provide that kind of result, and those proposals have not been stated here. I think the ultimate question really is what is reserved in ownership for future generations.

That concludes my comments. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. McNeil follows:]

HEARINGS BEFORE
THE ENERGY COMMITTEE
OF THE UNITED STATES SENATE
ON S.1145

TESTIMONY OF
SEALASKA CORPORATION ON
"1991" AMENDMENTS TO THE
ALASKA NATIVE CLAIMS SETTLEMENT ACT
BY CHRIS MCNEIL, JR.
May 19, 1987

Good Morning Senator Murkowski, Ladies and Gentlemen:

I am Chris McNeil, Jr., Sr. Vice-President of Sealaska Corporation. I am pleased to have the opportunity here to testify today on "1991" Amendments to the Alaska Native Claims Settlement Act.

With the following exception, Sealaska concurs with the Alaska Federation of Natives draft of the 1991 Amendments. Sealaska recommends the expeditious enactment of the AFN 1991 amendments.

There are several provisions which I would like to give particular emphasis:

ANCSA Corporate Reorganizations: There are several methods which have been proposed which would allow the ANCSA corporations to be more viable participants in capital markets, while still permitting the ANCSA corporations to maintain their unique Alaska Native character. One method proposed is a "recapitalization" plan in which the capital structure of the regional corporation could be restructured. Sealaska, on the other hand, proposes "1991" amendments which would restructure its assets. It seeks amendments to ANCSA which would affirmatively and flexibly permit Regional corporations to restructure its assets and permit transactional tax immunity to protect the transfer of such

assets. This would permit Sealaska to retain the 100% Alaska Native ownership of the Regional corporation and still permit the participation of certain of its subsidiaries or other business in an open market on a discrete basis.

In Sealaska's view this asset restructuring would permit planned and limited liquidity to shareholders of the Regional corporation while retaining Native ownership and control of the Regional corporation. For example, this plan would allow a Regional corporation to dividend out alienable stock in one of its subsidiary corporations and still retain the stock of the Regional corporation restricted as it is now. This authorized restructuring of Regional corporation assets would also have a significant added benefit of permitting the restructured business entities to participate in the equities markets and be valued in pure economic terms to its shareholders accordingly. If the business entity is successful it will have significantly greater capital available to it than Regional corporations have under the current circumstances.

The Sealaska draft language for ANCSA corporation asset restructuring is attached.

There are 5 other provisions which Sealaska strongly recommends for adoption. They are:

1. Eligibility for Federal Programs. This protects certain ANCSA corporation distributions to its shareholders from being counted as an asset for government benefit programs. It will avoid the situation where the ANCSA Corporation gives with one hand and the government takes away with the other. It would permit a benefit to those Alaska Natives who need it most.
2. Shareholder Preference in Employment. This provision would clarify existing law and clearly establish a policy of shareholder preference in employment for ANCSA corporation shareholders.
3. Minority Business Status. This provision would clarify that ANCSA corporations are minority owned businesses for the purposes of implementing federal SBA standards.
4. Shareholder Homesite Program. This provision would make the shareholder homesite distribution authority applicable to Regional and Urban corporations in addition to Village corporations. This is an increasingly popular concept among Sealaska shareholders.

5. Alaska Native Fund Distribution Pool. This provision would clarify that ANCSA established an Alaska Native Fund Distribution Pool at its inception and that the remaining undistributed balance of such Alaska Native Funds will continue to retain ANF protections until the funds are exhausted.

This concludes my comments. Thank you very much.

SEALASKA'S PROPOSED AMENDMENTS

After section 7 in the Alaska Federation of Natives' proposed "1991" amendments to the Alaska Native Claims Settlement Act, as amended, add a new section 8:

Sec. 8. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"7(c). (a) Notwithstanding any other provision of law, a Regional Corporation may convey some or all of its assets to --

"(1) A Native Trust, as described in subsection (d) of this section;

"(2) A business entity, as described in subsection (e) of this section.

"(b) Any lands or interests in lands conveyed pursuant to subsection (a) may include --

"(1) Title to land;

"(2) Interest in lands; or

"(3) Standing timber; and

"(4) Shall exclude title to or interest in the subsurface in lands subject to section 7(i); and

"(5) Any standing timber subject to section 7(i) which is conveyed shall not be harvested for sale except --

"(i) disease;

"(ii) fire;

"(iii) safety;

"(iv) Uses in connection with or related to subsection 21(d)(2)(B)(i);

"(v) all such sales shall be subject to section 7(i).

"(c) All assets conveyed or transferred pursuant to subsection (a) shall be subject to the transactional immunities from taxation as provided in section 21(d).

"(d) In order to preserve the heritage and culture of Alaska Natives or Native Groups and to promote the health and welfare of Alaska Natives, the board of directors of a Regional Corporation, if authorized to do so by its articles of incorporation and its by-laws, may by resolution establish a Native Trust for the benefit of holders of Settlement Common Stock.

"(1) The resolution authorizing the establishment of the Native Trust may provide that the beneficiaries of the Native Trust may be restricted to Natives, descendants of Natives or entities described in section 7(g)(2)(B)(iii);

"(2) The resolution authorizing the establishment of the Native Trust may not limit the beneficiaries to a group of individuals composed only of employees, officers, or directors of the Regional Corporation from which the assets were originally transferred or the Native Trust;

"(3) The creation of a Native Trust shall be evidenced by a trust instrument identifying the trustee or trustees and the beneficiaries;

"(4) The purpose of a Native Trust, set out in the trust instrument, shall be to provide social and economic benefits to the beneficiaries of the Trust permitted in subsection 7 of this section;

"(5) The Native Trust shall not be subject to the Rule Against Perpetuities;

"(6) Assets may be transferred to a Native Trust, with or without consideration, by the board of directors of the Regional Corporation creating the Trust;

"(7) Beneficiaries of a Native Trust shall be holders of Settlement Common Stock of the Regional Corporation, and pursuant to a resolution of its board of directors, the trustor shall add additional holders of Settlement Common Stock on the same terms and conditions as the original beneficiaries;

"(8) To the extent not inconsistent herewith, the establishment and administration of such a Native Trust shall be governed by the laws of the State of Alaska;

"(9) The earnings of any such Native Trust shall not be subject to any form of Federal, State or local taxation; Provided that this exemption shall not apply to any income from the investment or other use of such distributions;

"(10) No Native Trust shall be established for, or operated as, a business, the principal business of which is operation for profit;

"(11) The basis of a Native Trust accepting a conveyance of any asset or stock conveyed pursuant to this section (or other law) shall be the same as it would be in the hands of the Regional Corporation making the conveyance;

"(e) The board of directors of a Regional Corporation, if authorized to do so by its articles of incorporation and its by-laws, may by resolution establish one or more business entity or entities, including subsidiary corporations, joint ventures, or partnerships, more than 50% of the outstanding shares or other ownership interest of which are owned, upon the transfer of assets by the Regional Corporation and/or the holders of Settlement Common Stock.

"(1) Any such business entity shall be authorized to transact business in accordance with its articles of incorporation or partnership or other agreements and the laws of the State where it is incorporated or licensed to conduct business;

"(2) Stock issued in such business entity may be subject to the provisions of sections 7(g)(2)(B)(i) and 7(g)(2)(B)(ii);

"(3) Stock issued in or other ownership interest established in such business entity may be --

"(i) restricted in issuance to Natives, descendants of Natives or entities as described in section 7(g)(2)(B)(ii);

"(ii) issued pursuant to the provisions of section 7(g) (2) (C) .

"(4) No stock or other ownership interest established in such business entity may be issued or transferred to a group of individuals composed only of employees, officers, or directors of the corporation from which its assets were originally transferred or the business entity.

Senator MURKOWSKI. Thank you very much. I appreciate your statement, Chris.

Our next witness is Mr. Roy Huhndorf, president, Cook Inlet Regional, Inc. I understand you have traveled all night. It is a pleasure to welcome you this morning. I am glad to see that you are bright and chipper.

STATEMENT OF ROY M. HUHDORF, PRESIDENT, COOK INLET REGIONAL INC.

Mr. HUHDORF. I do not know about the latter, Mr. Chairman, but thank you for this opportunity. My name is Roy Huhndorf, and I am president of Cook Inlet Regional, Incorporated, one of the 12 Alaska regional corporations. For purposes of the time constraint on our hands, I think if you would like I could summarize my testimony.

Senator MURKOWSKI. That will be fine.

Mr. HUHDORF. I have submitted for the record written testimony, and attached to that testimony is an additional document that is entitled changes that we believe should be made in the Senate bill. These are technical—these are more technical in nature than my testimony, my testimony being general.

Senator MURKOWSKI. They will be entered into the record as if read.

Mr. HUHDORF. I want to say, first of all, that I compliment you, Senator Murkowski, and Senator Stevens, for the hard work you have put into this process over the last three years, the hearings that you have attended, the work your staff has done to try to bring some closure on this important piece of legislation for Alaska natives.

I think we are close to that point, and I urge you to continue the work you have been doing and to hasten this bill to conference committee at the earliest possible time in the House. I think time is running. We need to move quickly. Compromises that must be made and should be made will be made, I think, in the—will come out of the conference committee. I think it is most important that we bear in mind that unless we have time to implement this legislation it will do us probably little good if 1991 is upon us and we have not yet acted.

There is, as Senator Stevens has pointed out, legal challenges yet to be made. They need to be made. The regions and villages need to gear up to implement this legislation, and this year, I think, is timely for the passage of this legislation.

In general, I support the bill that the Committee has put forth that the Alaska delegation has worked on with a couple of exceptions, and I think these are modifications that should be considered, and to echo the president of the AFN, I would say that the opt in, opt out provision should be looked at again. I think that the regions should be given the same opportunity as the villages for an opt out approach to deciding on whether stock should be restricted or unrestricted in 1991.

Secondly, I think that dissenters' rights should be optional. There are varying problems among the regions and a strictly—a

provision that strictly requires dissenters' rights might not work well for some as it might for others.

And thirdly, I think that there are problems with the disclaimer attaching to the QTE. I personally am worried, my corporation is worried that the benefits that Alaska natives have historically gotten from the Federal Government, the Indian Health Service, the BIA, the Johnson-O'Malley program, are immensely important to us, and I think that—and I would hesitate to run the risk that some judge in the future would interpret the Congress's intention here in an unconcerned way and propose to eliminate or actually eliminate these important services. So that is my basic worry about the disclaimer, and I think that if need be, that the QTE should be modified so that a less strong disclaimer is necessary or possibly the disclaimer can be eliminated completely.

I would also go on to say that if necessary the disclaimer should be eliminated, the QTE should be eliminated completely if that is the only alternative to watering down or getting rid of the disclaimer. Other than that, other than those three areas I have mentioned in the technical paper some areas that I think need to be looked at. Again, I would urge rapid action on this legislation, and I wanted to thank you for this opportunity to testify today, and I would be open to answering any questions you may wish to ask.

[The prepared statement of Mr. Huhndorf follows:]

ROY M. HUHNDORF
PRESIDENT, COOK INLET REGIONAL INC.
TESTIMONY ON S.1145 BEFORE SENATE ENERGY
AND NATURAL RESOURCES COMMITTEE
May 19, 1987

It is a pleasure to testify before you today in what, I hope, is close to the end of a very long process. In 1971, the Congress launched the Native community of Alaska on an amazing course, one without precedent in the history of American-Indian relations. Built in to that process was the need, before the expiration of twenty years, to revisit the experiment, to perfect it, to determine a proper course for the future.

Our distinguished delegation in the Senate, Senators Stevens and Murkowski, have worked intensely with the Native community to help fashion the future with us. The legislative approach that they have fostered--one that mirrors the approach of the House--is to have a set of choices from which Native Corporations can choose, choices that reflect the experience that each Native Corporation has had with ANCSA over the last fifteen years.

The task of the Senators and their staffs has not been an easy one. While the Native Community has been, in most instances, united and clear in the articulation of its goals, there have been very difficult questions where the intensity of Native dedication to particular goals has varied among the Regions and Native community, as well as with others in the state. They have sought to find a formula which will endure, providing a satisfactory framework for economic and cultural growth.

We emphasize that the main enemy is delay. When the process of contemplating 1991 amendments began, it was with the hope that it could be done in an orderly process, allowing time for planning, time for whatever court tests might take place, time for the making of right decisions by 1991. If legislation is not passed soon, then many Native Corporations will act in haste, making the kinds of decisions that will lead to immense regrets in the future and the kind of history of shame that has characterized termination of Indian reservations in the lower 48. Cook Inlet Region has tried to keep its shareholders fully informed, and it has energetically pursued alternatives for the post-1991 period. But other corporations, with fewer resources and less comfort with corporate structures, will be placed in a dangerous vice if legislation is not passed in this session.

The result of several years of work, of countless trips to Washington, of the labor of several Native conventions, of the efforts of our Senators, is now in your hands. We generally support the bill as presented to this committee by Senators Stevens and Murkowski. There are parts of this legislation that we think can be improved (and a technical memorandum is attached), and other members of the Native community in Alaska

have strong negative views. But the structure and language of the bill has been thought through during the 99th Congress on both the House and Senate sides and there has been ample opportunity since for comment and critical revision.

We must say that we are sympathetic to continuing efforts, through the leadership of the Alaska Federation of Natives, to provide for Regions, as well as Village Corporations, the continued restriction of stock subject to the power of shareholders to end those restrictions. We also think it is appropriate to provide to each Corporation the option of determining whether and how shareholders who dissent from a decision to continue restrictions should be compensated.

Finally, we, like the rest of the Native community, are concerned about a broadly stated disclaimer provision dealing with state, federal and tribal authority. Many individuals and groups have made their views known on this issue. I speak from the vantage of long experience, before 1971, with the Alaska Native Hospital. The role that federal services has played in the social and physical health of the Native community in Alaska has been extraordinary. It would be tragic if, at some future time, a judge or federal or state official misdetermined the intent of Congress and used the disclaimer as part of an argument for the lessening or elimination of such services.

We would accept continuing efforts to limit the disclaimer language even if modification of the disclaimer entailed revision of the sections of the proposed legislation dealing with qualified transferee entities. We believe that many of the goals of those who wish qualified transferees entities can be gained, with the remaining amendments and under state law.

There may also be other grounds for removing the section on qualified transferee entities from the legislation. The Supreme Court has been considering, in Hodel v. Irving, what limits exist on the Congressional power to affect certain property rights of individual Native Americans. While we think that the 1991 legislation is wholly consistent with the history of proper federal intervention, some aspects of the qualified transferee entity alternative raise questions at the margin. By permitting transfers that ultimately may render valueless individual shares of stock, the qualified transferee entity section could raise constitutional questions that delay proper implementation of the legislation as a whole.

Because these proposed amendments provide, at least as an option, the restructuring of assets as part of a way of improving the way the product of the claims settlement is held, there are, inevitably, some unexpected possible tax consequences. Part of making sophisticated changes in permissible corporate structures must include consideration of tax consequences. We have been working with the staffs of the committee to ensure that changes authorized in the bill do not have such unanticipated conse-

quences and attached are some comments about the implications of the legislation in this area.

Ultimately, this legislation must be perceived as a refinement of the historic efforts of the Native community and the Congress leading to the Alaska Native Claims Act of 1971. That legislation charted so bold and novel a course for Alaska Natives that we can only wonder that more change and modification is not needed. Few pieces of federal legislation in the history of federal-Indian relations have been so dramatic.

What we do here today, I believe, is homage to those who were the architects of Alaska Native policy twenty years ago. This legislation would recognize the extraordinary lessons that have been learned since passage of ANCSA. These include lessons about the variety of the Regions of Alaska, and the goals of their people; it includes lessons about the amazing ability of Native people to adapt to new forms and new organizations; it includes important lessons about the brave efforts of many hundreds of Alaska Native leaders to master the corporate mode at a time when Alaska's economy itself is undergoing massive change.

The proposed legislation respects the basic contribution of 1971, while sensitive to what has been learned since then. It improves the working of the corporate form, giving choices to Alaska Native corporations and their shareholders. For Cook Inlet Region, and its shareholders, these first fifteen years have been intensely exciting and productive. With the tools provided by the proposed amendments, we hope, we will be able to magnify ways in which it has been good for its shareholders, and all Alaska natives, and stay true to the goals of federal law.

Mr. Chairman, I would like to submit for the Record changes that CIRI believes should be made in the Senate Bill.

Mr. Chairman, thank you for the opportunity to testify before you today. I want to thank you for your dedication, hard work, and perseverance on this issue. You have held numerous hearings here in Washington, Anchorage, Fairbanks, and throughout Alaska and have taken personal testimony from over 325 witnesses concerning this legislation.

Mr. Chairman, the resolution of this issue is of great importance to Alaska Natives and to all Alaskans. Because of yourself, Senator Stevens, Congressman Young, and the outstanding work of Tom Roberts and John Moseman of your staff and that of Greg Chapados of Senator Steven's staff and of Rick Angew of Congressman Young's staff, I know that a successful conclusion will be reached.

Thank you.

CHANGES CIRI BELIEVES SHOULD BE
MADE IN THE SENATE BILL

While CIRI believes that the Senate Bill accomplishes most of the objectives of 1991 legislation, there are several changes, mostly technical, which we believe need to be made. We have summarized the most important of these changes below. We would be happy to meet with the Committee and its staff to discuss these changes and the other technical corrections, which we believe should be made in the Bill.

1) Section 7(g)(1) should be amended to permit Settlement Common Stock to be issued as a dividend to the existing holders of Settlement Common Stock. This would permit a Regional Corporation to distribute stock carrying additional voting rights to the holders of its Settlement Common Stock, with this new stock remaining subject to all the restrictions of Settlement Common Stock. Such a distribution could be very useful to a corporation adopting a recapitalization plan to provide some liquidity to existing shareholders while maintaining voting control in Native hands. Additionally, to provide Native Corporations the flexibility of capital structure that is available to other business corporations, section 7(g)(2)(c) should permit section 7(g)(2) stock to be issued as a dividend with respect to any class of stock (not just as a dividend on Settlement Common Stock).

2) Section 36, relating to procedures for amending the articles of incorporation, contains some of the most important provisions of the Bill. We believe that language should be added to section 36(a) making it clear that the procedures of the Bill are intended to prevail over any contrary provision of the existing articles of incorporation as well as any contrary provisions of state law. Articles of incorporation frequently mirror and repeat state law requirements, so that the provisions of the Bill will be ineffective unless they override contrary amendment procedures that may be in the articles. Additionally, CIRI believes that the provisions for shareholder petitions should be deleted from section 36, at least with respect to any matters other than termination of restrictions. The tradition in American corporations that want to adopt the direct democracy approach of shareholder petitions should be free to do so, but corporations that prefer to follow a more traditional corporate model should not be burdened with petition provisions which will appear unusual to the investment community.

3) If section 40, dealing with conveyance of assets to a qualified transferee entity, is left in the Bill, we believe that several technical changes should be made to more clearly provide that such conveyances cannot be used by Native Corporations to evade their responsibilities under Section 7(i) and the Section 7(i) Settlement Agreement, or under other valid and binding contracts. We believe it is in the long-term interest of Native Corporations that other businesses be able to deal with

them without fear that obligations may be evaded by transfers to a qualified transferee entity.

4) Section 40(d) contains language that is important to CIRI dealing with the tax consequences of transfers to qualified transferee entities on spin-offs of assets to other entities. Even if transfers to qualified transferee entities are eliminated from the Bill, this language will still be needed to permit corporations, without large adverse tax consequences, to restructure their assets through a spin-off. Corporations may find that the best way to serve the goals of liquidity and Native control is to restructure (through a spin-off) so that some assets are held by an entity with alienable ownership interests while other assets are held by the Native Corporation with restricted stock. The language of section 40(d) is designed to facilitate such a transaction.

There are several tax issues arising in a spin-off which the present language of section 40(d) does not answer. CIRI, therefore, is suggesting technical changes that would deal with the following issues: (i) providing a means for allocating the basis of a shareholder's stock between the stock retained by the shareholder in the Native Corporation and the stock (or other beneficial interest) conveyed or distributed, (ii) providing that a Native Corporation making a conveyance or distribution retains all of its own tax attributes (except for earnings and profits where a method for allocating earnings and profits is provided), and (iii) providing for tacking of the holding period for assets, stock, or other beneficial interests.

5) CIRI also believes that another tax issue should be dealt with in the Bill. ANCSA does not presently contain any provision regarding the basis of stock of a shareholder of a Native Corporation. Once it becomes possible, in some Corporations, for shares to be sold, shareholders will need a practical means of determining basis. CIRI is therefore suggesting that language be added to section 40 (d) to provide for the basis of alienable stock to be established, when such stock is first actively traded on an established market, as the greater of the fair market value of the stock or the adjusted basis of the property of the Corporation.

6) With respect to the securities law exception language of section 28, CIRI believes it is important to provide that the exemption shall not be construed as preventing voluntary registration under the Securities Act of 1933 or the Securities Exchange Act of 1934, and that voluntary registration will subject a Corporation to the provisions normally applicable as a result of registration. Some corporations may determine that the reassurance which SEC registration and reporting provides to the investment community.

7) Finally, CIRI believes that section 29(e) should be modified to provide that a Corporation shall be owned and

controlled by Natives if either 50% or more of its stock is owned by Natives or their descendants, or if Settlement Common Stock represents 50% or more of the total voting power. It is much easier, and less invidious, for a Corporation to keep track of its Settlement Stock than to determine whether each of its shareholders (including shareholders of alienable stock) is a Native or descendant of a Native. Since almost all Settlement Common Stock is held by Natives or their descendants, this alternative test would accomplish the purposes of federal law while being much more practical to administer.

Senator MURKOWSKI. Thank you, Mr. Huhndorf.

Our next witness will be Donald F. Nielsen, senior vice president, Bristol Bay Regional Corporation.

We wish you a good day and look forward to your testimony, Mr. Nielsen.

**STATEMENT OF DONALD F. NIELSEN, SENIOR VICE PRESIDENT,
BRISTOL BAY REGIONAL CORP., ACCOMPANIED BY STEVE
SILVER, COUNSEL**

Mr. NIELSEN. Thank you.

Mr. Chairman, thank you for this opportunity to testify on behalf of the Bristol Bay Native Corporation. I am Donald F. Nielsen, senior vice president, and I have with me Steve Silver, who is our D.C. counsel, who is to assist me in answering any questions that you might have.

I have submitted a more complete statement which I ask to be printed in the record.

Senator MURKOWSKI. It will be entered into the record as if read.

Mr. NIELSEN. Thank you.

Mr. Chairman, there is a definite need for 1991 legislation. When the Alaska Native Claims Settlement Act was passed it did two important things for native peoples. It created economic opportunity and it secured legal title to the land. However, it also contained a fatal flaw, permitting stock restrictions after 1991. That is the main reason we need legislation. I cannot stress enough how important stock restrictions are. They are key to continued native control of ANCSA corporations.

That this is so should come as no surprise. Our daily newspapers are filled with examples after examples of corporate takeovers. Less than 20 percent of targeted corporations are successful in repelling raiders. Less than 20 percent are successful in remaining independent. Clearly the anti-takeover devices found in state corporate law are inadequate protections. They cannot assure continued native control.

Not only today's newspapers but history teaches us that unrestricted stock offers no protection. Historically, whenever Indian property has become unrestricted, Indian peoples have sold it. Certainly the lure of immediate cash is very strong for peoples who have known poverty. For example, in Bristol Bay individuals have sold allotments and limited entry permits because of economic need. To us it is very clear that for native control to continue stock restrictions are essential.

As we see it, this position is factually correct, supported both by historical experience and by more recent takeover trends. Yet restrictions standing alone are not enough. The restrictions should be coupled with a term. A term is a period of time, say, 20 years, during which restrictions cannot be removed. It is this combination, restrictions coupled with a term, which is in present law. Without such a combination restrictions can be discarded during the first poor fishing season.

The next easy step is takeover, and I refer to Appendix Page 23 for specific mandatory language to S. 1145. I have stressed the importance of stock restrictions. Equally important are land protec-

tions. ANCSA land protections include a 20 year moratorium on real property taxes. In 1990 the Alaska National Interest Lands Conservation Act added a land bank. ANILCA was to secure through a mechanism of land bank agreements an exemption from real property taxes so long as the land remained undeveloped. In other words, subsistence lands would not be taxed. The same land bank agreements were also to protect native lands from squatters and from seizure for payments of certain debt.

These are all important protections for native lands. Unfortunately, BBNC's experience is that field personnel in the Interior Department are slow in implementing the land bank provisions. We spent a year negotiating a standard land bank agreement with the Secretary's office and finally reached a mutually satisfactory understanding as to its terms by December, 1985. Since then, because of inaction in the field, only two land bank agreements have been signed in all of Alaska. That is why Section 13 of S. 1145 providing for automatic land bank protections is so important.

Bristol Bay Native Corporation can support S. 1145 because it creates the opportunity for continued stock restrictions, it allows us dissenter rights, it provides land bank protections, and it permits our shareholders to make their own choices. We thank Senator Stevens and you, Senator, and your staffs for your hard work in refining S. 1145 so it needs little technical amendment.

The issue in all 1991 bills which has attracted the most attention this sovereignty, while the Congressional delegation, the Governor of Alaska, the Alaska Federation of Natives all agree that this bill is to be neutral on sovereignty, they cannot agree on what that means. If Section 12 and 21 are inconsistent with neutrality, let us redraft and move on. Sovereignty must not become a quagmire in which this bill flounders. And I refer to Appendix Page 24 for specific amendatory language to S. 1145.

This legislation is needed now. It is time for the corporations to commit their resources to the tremendous task ahead. The necessary corporate planning for 1991, including shareholder education, disclosure materials, and financial reserves. For example, BBNC plans to commit two years to shareholder education and disclosure prior to the crucial vote on stock restrictions. Assuming continued restrictions are approved BBNC needs time to set aside the cash reserve with which to honor dissenter rights. So none of this can be accomplished quickly, and none can begin without the framework of specific legislation.

In the terms of corporate planning, the time for legislation is now. In terms of native peoples' legitimate needs, the time for legislation is now. Bristol Bay Native Corporation urges this Committee to act quickly on S. 1145. If an agreement with the Alaska Federation of Natives cannot be reached on the remaining issues, mandatory vote, optional dissenter rights, and disclaimer language, we request that a bill similar to S. 1145 be reported by this Committee for the benefit of at least Bristol Bay, Cook Inlet, Koniag, and Aleut Corporations.

This would also allow the corporations in those area to accomplish their goals while work continues on a solution for other regions. Our timetable simply does not give us the luxury of waiting any longer.

Mr. Chairman, thank you again for this opportunity to testify. I will be happy to answer any questions.

[The prepared statement of Mr. Nielsen follows:]



TESTIMONY ON S. 1145
BEFORE THE
UNITED STATES SENATE
ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS

May 19, 1987

By

Donald F. Nielsen, Senior Vice President
Bristol Bay Native Corporation

Mr. Chairman, thank you for this opportunity to testify on behalf of Bristol Bay Native Corporation. I am Donald F. Nielsen, Senior Vice President. I have submitted a more complete statement which I ask to be printed in the record along with the comments I'm making today.

Mr. Chairman, there is a definite need for 1991 legislation.

When the Alaska Native Claims Settlement Act was passed, it did two important things for Native peoples. It created economic opportunity, and it secured legal title to the land. However, it also contained a fatal flaw -- forbidding stock restrictions after 1991. That is the main reason we need legislation.

I cannot stress enough how important stock restrictions are. They are key to continued Native control of ANCSA corporations.

That this is so should come as no surprise. Our daily newspapers are filled with example after example of corporate takeovers. Less than 20 percent of targeted corporations are successful in repelling raiders. Less than 20 percent are successful in remaining independent. Clearly, the anti-takeover devices found in state corporate law are inadequate protection. They cannot assure continued Native control.

Not only today's newspapers, but history teaches us that unrestricted stock offers no protection. Historically, whenever Indian property has become unrestricted, Indian peoples have sold it. Certainly the lure of immediate cash is very strong for peoples who have known poverty. For example, in Bristol Bay individuals people have sold allotments and limited entry permits because of economic need.

To us, it is very clear that, for Native control to continue, stock restrictions are essential. As we see it, this position is factually correct, supported both by historical experience and by more recent takeover trends.

Yet restrictions, standing alone, are not enough. The restrictions should be coupled with a term. A term is a period of time, say 20 years, during which restrictions cannot be removed. It is this combination (restrictions coupled with a term) which is in present law. Without such a combination, restrictions can be discarded during the first poor fishing season. The next easy step is takeover. [See Appendix, p. 23 for specific amendatory language to S. 1145.]

I have stressed the importance of stock restrictions. Equally important are land protections.

ANCSA's land protections include a 20-year moratorium on real property taxes. In 1980, the Alaska National Interest Lands Conservation Act added the Land Bank. ANILCA was to secure, through the mechanism of Land Bank agreements, an exemption from real property taxes so long as the land remained undeveloped. In other words, subsistence lands would not be taxed. The same Land Bank agreements were also to protect Native land from squatters and from seizure for payment of certain debts. These are all important protections for Native land.

Unfortunately, BBNC's experience is that field personnel in the Interior Department are slow in implementing the Land Bank provisions. We spent a year negotiating a standard Land Bank agreement with the Secretary's office and finally reached a mutually satisfactory understanding as to its terms by December 1985. Since then, because of inaction in the field, only two Land Bank agreements have been signed in all of Alaska. That is why Section 13 of S. 1145, providing for automatic Land Bank protections, is so important.

Bristol Bay Native Corporation can support S. 1145 because it creates the opportunity for continued stock restrictions; it allows us dissenters' rights; it provides land protections; and it permits our shareholders to make their own choices. We thank Senators Stevens and Murkowski and their staffs for their hard work in refining S. 1145 so that it needs little technical amendment.

The issue in all 1991 bills which has attracted the most attention is sovereignty. While the Congressional Delegation, the Governor of Alaska, and the Alaska Federation of Natives all agree that this bill is to be neutral on sovereignty, they cannot agree on what that means. If Sections 12 and 21 are inconsistent with neutrality, let us

redraft and move on. Sovereignty must not become the quagmire in which this bill flounders.

[See Appendix, p. 24 for specific amendatory language to S. 1145.]

This legislation is needed now. It is time for the corporations to commit their resources to the tremendous tasks ahead: the necessary corporate planning for 1991, including shareholder education, disclosure materials and financial reserves. For example, BBNC plans to commit two years to shareholder education and disclosure prior to the crucial vote on stock restrictions. Assuming continued restrictions are approved, BBNC would need time to set aside the cash reserves with which to honor dissenters' rights.

So none of this can be accomplished quickly. And none can begin without the framework of specific legislation. In terms of corporate planning, the time for legislation is now. In terms of the Native peoples' legitimate needs, the time for legislation is now.

Bristol Bay Native Corporation urges this Committee to act quickly on S. 1145. Even if an agreement with the Alaska Federation of Natives cannot be reached on the remaining issues (mandatory vote, optional dissenters' rights and disclaimer language), we request that a bill similar to S. 1145 be reported by this Committee for the benefit of at least the Bristol Bay, Cook Inlet, Koniag, and Aleut regions. This would allow the corporations in those areas to accomplish their goals while work continues on a solution for the other regions. Our timetable simply does not give us the luxury of waiting any longer.

Mr. Chairman, thank you again for this opportunity to testify. I will be happy to answer any questions you may have.

APPENDIX I



TESTIMONY ON S. 1145
BEFORE THE
UNITED STATES SENATE
ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS

May 19, 1987

By

Donald F. Nielsen, Senior Vice President
Bristol Bay Native Corporation

Mr. Chairman, thank you for this opportunity to testify
on behalf of Bristol Bay Native Corporation. I am Donald F.
Nielsen, Senior Vice President.

Today, I'll describe

- I. Who We Are: as a people and as a corporation
- II. ANCSA: its history
- III. ANCSA: the 1991 deadline
- IV. BBNC's careful approach to 1991
- V. Legislation: BBNC's key concerns
- VI. The Future: Congress' important role.

I. Who We Are

The Bristol Bay Region is located about 150 miles
southwest of Anchorage, in one of the most productive
fishing areas of the world. Our people are fishermen. They
fish either commercially or for subsistence.

Sixty percent of our 5300 shareholders live in the 29
villages in the Region. Many others return home for fishing

season or retirement. The peoples of the Bristol Bay Region are Aleut, Eskimo, or Athabascan.

Under the Alaska Native Claims Settlement Act, BBNC was entitled to \$32.7 million and 3 million acres of subsurface estate. Here is what we have done with them. We have invested in the Anchorage Hilton, a first-class Anchorage hotel; a Seattle-based food processor, Tyrrell's dry and canned pet food; United Bank Alaska, an Alaska bank started by Native corporations; and finally, drill rigs and vehicles that provide support to the oil industry. Given the opportunity presented by our basic land entitlement, BBNC has contracted with Resource Associates of Alaska to explore for hardrock minerals.

BBNC is one of the most financially viable and successful of the 13 Regional corporations. BBNC remains one of the top four in overall performance and positive retained earnings. Our shareholders have received over \$5 million in dividends.

II. ANCSA: Its History

For the next few minutes, I'd like to talk about the history of the 1971 Alaska Native Claims Settlement Act. This sets the stage for today's concerns.

In February 1968, three years before the passage of ANCSA, Native people from around the state testified at hearings in Anchorage before the Committee on Interior and Insular Affairs. The quotes reflect widespread desires among the Native community.

Even Moses Laumoff from Kodiak said, "They now shoot game for fun. No more game pretty soon. No more fish. Land not worth much without game and fish; land 'aahsetuck." All used up. When we have land it is good. It is all we got."

Emil Notti, then President of the Alaska Federation of Natives, talked about the encroachment of modern

civilization on the old ways of life, and said, "The Natives need land to make the transition from a subsistence economy to a wage economy."

State Senator John Sackett testified, "We are ready to decide what we as Native Alaskans want, and we are capable of handling our problems."

And Hugh Nicholls of the Arctic Slope Native Association touched on a key point when he stated, "We feel the title to the land--and the wealth that it holds--is the key to our future, economically, educationally, and healthwise."

The important point of bringing up these quotes today is to show that Congress responded to what the Native people said they wanted.

- o ANCSA gave Alaska Natives something extremely valuable: legal title to the land.
- o "Legal title" means we OWN the land, and others cannot just take it away from us.
- o "Legal title" means we have the right to use the land, and prevent others from using it.
- o "Legal title" is important because it is recognized by the public and by the courts.

LEGAL TITLE IS THE FIRST STEP IN KEEPING LAND FOREVER.

In settling Native land claims, Congress also wanted to respond to the Native community's expressed desire for economic opportunity. Congress wanted to achieve opportunity for Natives, but not through the reservation system. So Congress chose a recognized economic and legal structure--the profit corporation--to protect Native land and opportunity.

The advantages of using a recognized system include:

- o the rules are clear for how to organize and operate it
- o the law is clear on what it can and cannot do
- o there are built-in shareholder protections

- o shareholders' ownership and participation continue regardless of where the shareholder lives
- o it goes on even though original shareholders die
- o it can be adjusted to fit many economic goals.

At the same time, Congress added to the corporate structure so it would fit the special needs of Alaska Natives. Congress made ANCSA corporations unique by:

- o putting restrictions on the stock
- o allowing only Natives to vote
- o creating land protections under the Land Bank
- o allowing special corporate income tax advantages.

At first, the profit corporation form may seem difficult to understand and hard to operate. But, non-profits, cooperatives and IRA forms are just as hard to manage.

What are the advantages of a profit corporation? Both Federal and state laws are very clear about the rights of shareholders. "Rights of shareholders" is just another way of saying "shareholder protections."

A. The Right to be Informed

Under corporate law, shareholders must be kept informed of certain things by the management.

1. It is the shareholders' right to receive an ANNUAL REPORT. Both state and Federal law require public corporations to produce an annual report. At least once a year the shareholders should get an audited record of the corporation's financial performance and status.

The annual report must contain audited numbers and not just a self-serving description by management of what is being done. Independent public accountants have checked to make sure economic events are properly recorded and

reported. This avoids management manipulating the numbers to make itself look better.

2. It is the shareholders' right to be protected by PROXY RULES. Like annual reports, proxy rules are laid out in both Federal and state law. What's important about proxy rules? Persons soliciting proxies, whether management or a group of shareholders:

- o are required to give full information about how they intend to use the proxies at a shareholders' meeting, and who is paying for the proxy solicitation.
- o are required to provide full information about each candidate if proxies are for a slate of directors.
- o are required to provide full information about each issue if the proxies are for issues concerning the corporation. This information must include: (1) what the proposal is and (2) what the consequences are.

The proxy statement cannot contain false or misleading information, nor can important facts be omitted.

In summary, the law on proxy rules protects shareholders from being lied to on important matters.

B. The Right to be Treated Fairly

Corporate law is very clear about making sure that all shareholders are TREATED FAIRLY.

1. Shareholders' power is based on their stock ownership, not on personalities.
2. Shareholders have dissenters' rights on major issues. This means that shareholders who hold both majority AND minority opinions on an issue

are treated fairly. The decision of the majority will be carried out.

3. At the same time, the rights of the minority will not be abused or ignored.

C. The Right to Require the Board of Directors to Live Up to its "Fiduciary Duties"

This legal term basically means: When a director takes care of other people's money and property, he or she is governed by certain rules. These rules require that directors act in certain ways. A director must:

1. BE LOYAL to the corporation. The law does not allow directors to favor another interest over that of the corporation. In other words, directors may not take part in decisions which would benefit themselves personally. Directors with a conflict of interest may not vote on those matters.

The law requires directors to keep certain information confidential. They must not give or sell information which is of value to the corporation.

2. Act as a "PRUDENT" PERSON. This means a director has the legal responsibility to make INFORMED decisions. This means that he or she must do the necessary homework and understand the issues before voting.
3. Act within LEGAL AUTHORITY. A Board of Directors must obey the law: state and Federal laws, as well as the corporation's own Articles of Incorporation and By-Laws.

In addition, no director has the power to act alone. Corporate decisions may only be made:

- o by the Board
- o acting at a meeting, for which proper notice was given

o with a quorum present.

4. Act in the best interest of the WHOLE corporation. Directors are legally responsible to act in ways that will benefit ALL THE SHAREHOLDERS, not just ones from a particular area.

D. The Right to Participate

As owners of the corporation, shareholders have six major ways to be involved. They have the right to:

1. Participate in the ELECTION AND REMOVAL OF DIRECTORS. This means that the shareholders have a say in who runs the corporation and sets its policies.
2. VOTE ON PROPOSALS at shareholder meetings. The shareholders are the only ones who can approve amendments to the Articles of Incorporation, mergers or consolidations, transfers of all assets, and other items. They can also make recommendations to the Board on other issues.
3. Receive NOTICE OF SHAREHOLDERS' MEETINGS. The Board of Directors is not allowed to inform only some of the shareholders of a meeting. Every shareholder must be notified.
4. PETITION for special shareholders' meetings. If shareholders want an issue discussed, they have the right to collect enough signatures to require management to hold a meeting.
5. INSPECT RECORDS. Shareholders can demand to inspect the books and records of their corporation. Those records must be made available if the request is in good faith and for a proper purpose. This right gives shareholders access to the background and history behind the Annual Report.
6. File a DERIVATIVE LAWSUIT. If the corporation is entitled to some benefit or money which the Board

of Directors is not enforcing, shareholders can file a lawsuit. If the shareholders win, the benefit or payment would go to the corporation. This way, not just the shareholders who filed the lawsuit, but ALL shareholders would benefit.

Initially, the corporate form was chosen by Congress and the Native community to avoid federal controls. We also like the corporate structure because of the important shareholder protections it provides. Those rights listed above seem cold and dull--mere legal abstractions that mean little to people whose day-to-day reality is focused on the fisheries of Bristol Bay. But without these rights, our people would be vulnerable to the cold winds of abuse.

We believe that corporate law offers Natives far greater protections than are available with IRAs. But the law, standing alone, is not enough. It needs people to make it truly effective.

Traditional Native society is a cooperative one, based on trust, subsistence, and barter. While Native people have certainly been exposed to Western ways for decades, many of our traditional ways remained in 1971 (and still do today).

So, the system of corporations (in fact, any business system) requires a completely different way of thinking:

- o it requires competition
- o it requires using and understanding a cash-based economy
- o it requires doing business with strangers
- o it requires protecting ourselves against dishonest or incompetent people
- o it requires learning new skills in order to keep control of what we have.

In looking at how ANCSA set up our corporations, we realize that we as shareholders and as managers have a great deal of responsibility.

Management: These people must respect and act within the law to protect the rights of shareholders and manage their corporations effectively and honestly.

Shareholders: These people must stay informed about their corporations, they must participate, and they must require management to live up to its responsibilities.

Only when people observe and use the law can ANCSA give Natives the maximum protection and opportunity.

III. ANCSA: 1991

If all this has been set up and operating since the early 1970s, why are we bringing up ANCSA again today? Because the original bill contains a time-bomb--a deadline when the rules under which our corporations have been operating will change.

The year 1991, and all that it means for us, comes from a phrase in the Alaska Native Claims Settlement Act. This phrase says twenty years from the Act's passage--December 17, 1991--new, unrestricted stock will be issues.

Native corporation stock is presently "restricted." "Restricted" means that until 1991, a shareholder cannot sell his/her stock, cannot transfer it, and cannot use it to borrow money. Nor can these 20-year restrictions be lifted by shareholder vote.

Stock can only change hands when a shareholder dies, or by court action in a divorce or child support case.

If the law does not change, stock will be cancelled and new, unrestricted certificates issued in 1991. This unrestricted stock will be the same as stock of any American corporation: it can be sold, transferred, or used as collateral for a loan.

Of course, this means that Natives could lose control of Native corporations and land.

Historically, when Indian property has become unrestricted, Indian peoples have often sold their lands. Certainly the lure of immediate cash is particularly strong for people who know poverty. For example, Bristol Bay peoples have sold allotments and limited entry permits because of economic necessity. Also, Natives often sell for far too little because they may not know the true value of their property.

As concern grew over Native control, "1991" expanded. "1991" now refers to two main issues: stock and land protection. These issues can be broken into several different parts:

- o Stock: restrictions, dissenters' rights and new Natives
- o Land Protection: Land Bank, shareholder consent.

FUNDAMENTALLY a question of personal values. But, like any important matter, these 1991 issues exist in a larger context. The value choices of each issue also carry economic consequences. So we must consider each issue from both the value and economic sides in order to make sound choices for ourselves and our future.

Let's examine stock and land protection in terms of their economic consequences.

Stock

1. Restricted or Unrestricted Stock?

First, from the corporation's point of view:

If we keep the stock RESTRICTED, the corporations would have less ability to raise money.

If we keep the stock UNRESTRICTED, it would cost a great deal to fight a takeover--a fight Natives could lose.

Some Native corporations are natural targets for takeovers. The following are some characteristics which attract raiders:

inexperienced management, widespread stock ownership, high liquidity value but low market value per share, low debt equity ratio and potential turnaround from depressed earnings.

Further, corporate anti-takeover devices are not adequate protection. A study by Goldman Sachs & Company considered 71 tender offers (all of \$10 million or more) commenced from 1976 to 1982. Only 12 targets remained independent. The raiders eventually succeeded in 28 cases, all but two involving later higher bids after the original offer. In 31 cases, the target was acquired by a "white knight."

Now, from the individual shareholder's point of view:

- o If we keep the stock RESTRICTED, a shareholder's stock will have a lower economic value.
- o If we have the stock UNRESTRICTED, a shareholder's stock will have a greater economic value.

2. Keep or Eliminate Dissenters' Rights?

If dissenters' rights are ELIMINATED, the courts may not allow restrictions on stock to continue. And if we do not have restricted stock, we will not have Native control.

If dissenters' rights are KEPT, there will need to be corporate planning and sufficient reserves to buy back stock from those who want to go their own way.

3. Let in New Natives Free?

If new Natives are ALLOWED, each shareholder will receive less and less, resulting in many dissatisfied shareholders. It is hard to succeed as a corporation when a great number of the shareholders are dissatisfied.

If new Natives are NOT ALLOWED, each share retains the same percentage of ownership it now has.

Land Protection

Use or Not Use the Land Bank?

At this time, there is the option of using the Land Bank (Sec. 907, ANILCA). It provides that in return for compatible management and non-development, Native lands will be granted exemption from real property taxes, and protection from squatters and judicial execution.

If we USE the Land Bank, it will protect Native land from taxes, squatters and certain debts; but what we put in can't be developed to make money.

If we do NOT USE the Land Bank, we can develop the land to make money, but development requires more management costs plus dealing with taxes, squatters and debts.

So, in looking at ANCSA in light of 1991, we see there are two main issues: stock and land protection. While it is clear these are basically questions of value, it is also important for Natives to consider the economic consequences of our choices.

And making sound and responsible choices for 1991 requires us to plan ahead.

IV. BBNC's Approach to 1991

In 1983, Bristol Bay Native Corporation began formal planning for 1991. Before 1983, we were planning informally and we were listening. Many people wanted to talk about 1991, and Board members and officers listened to BBNC shareholders expressing their concerns and hopes. Then we developed two lines of approach.

BBNC would CHOOSE FOR ITSELF the best direction to take on 1991 issues. Regardless of what others would do, we

would develop an approach based on where our shareholders wanted to go. Also, we would analyze possible ways to reach our shareholders' goals from legal, economic, and political standpoints. And we would evaluate what the consequences of any legislation would be for BBNC and our shareholders.

Once we picked out our lines of approach, we then decided on the steps we would have to take to carry them out. At each step, we have reported back to our shareholders to keep them fully informed and to get their comments.

To allow shareholders to CHOOSE FOR THEMSELVES, we decided on the following steps:

1. Find out what our shareholders want. We took the lead among Regional corporations by going directly to our shareholders. We conducted a professionally administered shareholder survey in the fall of 1984. And we reported back to our shareholders on the survey results. I'll talk more about these survey results in a moment.
2. We looked at what would be possible. This step is critically important. We could put a lot of effort into deciding what we want with regard to 1991 issues. BUT UNLESS WE KNOW WHAT IS POSSIBLE LEGALLY, ECONOMICALLY AND POLITICALLY, WE WOULD BE WASTING OUR TIME.

We have to operate within the law. We are part of the economic system of the state and country. And, ultimately, the Federal government will have to approve any changes to ANCSA. We felt it would be irresponsible to tell our shareholders that we do not have to pay attention to the Constitution, economics or politics. It would be unrealistic to move ahead without taking this step.

BBNC analyzed the best legal approach to get what our shareholders want. BBNC got the best

advice possible from experts in both Indian and corporate law, in Alaska and Washington, D.C. We wanted to find an approach that would help our shareholders get what they want, not harm them in any way, and stand up under court challenge.

BBNC also analyzed the best economic approach to what the shareholders want. We wanted to make sure any course of action would help the economic future of our corporations.

BBNC also checked with the State and Federal governments to see what would be acceptable. We checked with the Alaska Congressional Delegation and the Office of the Governor. We found that Congress and the Governor are sensitive to Native concerns. They expressed support for our desire for continued Native control and land protection.

At the same time, officials have some concerns of their own:

- o they are not willing for government to pay more money, either by appropriation or by claims against the United States
- o they are not willing to limit the State's power of condemnation
- o they are not willing to limit the State's criminal or civil jurisdiction.

3. We wrote a draft of legislation that met all BBNC's criteria:

- o it would accomplish what our shareholders want
- o it is legally sound
- o it is economically sound
- o it is politically sound.

And we reported back to our shareholders.

Now for the specifics of our survey: why we chose to survey, the validity of the results, and what the results are.

BBNC carefully considered the alternatives before choosing the survey form. Our first choice would have been to talk personally at length with each shareholder. But time and money would not allow that. We have, of course, talked with hundreds of our shareholders over the past several years, and will continue to do so at every opportunity.

The survey emerged as the soundest choice for two main reasons:

- o Every shareholder would have the opportunity to participate regardless of where he lives--regardless of whether he feels comfortable speaking in public.
- o A professional survey would provide a statistically-reliable sample of BBNC's peoples and their views, rather than relying on self-appointed spokesmen.

Dittman Research was chosen to write, give and analyze the survey. Dittman is an independent Alaska research firm with 15 years experience in the field, and a track record of accurate results. The company has a reputation for integrity, objectivity and technical skill.

More than 1100 BBNC shareholders, or 26 percent, responded to the mailed-out survey. That is a very high rate of participation, according to Dittman Research.

More shareholders participated in BBNC's survey than took part in APN's meetings, or in the Department of the Interior's samplings. The only comparable number of participants was in the Berger Commission statewide hearings, but there is no way to check on whether these spokesmen reflected the feelings of Bristol Bay peoples as a whole.

The results of the survey show us our shareholders' values. Our peoples' values form a strong foundation. This is the base on which we are building BBNC's 1991 work.

- o 63% of BBNC shareholders want to keep stock restricted.

- o 66% want continued Native control of corporations.
- o 57% are against letting new Natives into the corporation for no consideration.
- o 83% favor balance in land use: developing part of it and keeping part of it for subsistence.
- o 76% are against trading their stock for mere membership in another organization.
- o 75% are against any organization which would lessen current shareholder protections.
- o 69% want decisions on 1991 to be made by themselves at a shareholders' meeting.

Besides five pages of survey questions, shareholders were asked to write in their comments. The following are samples of our shareholders' opinions.

* * * * *

I would very much like to convince the Native Corporation stockholders that when 1991 comes they should keep in mind what they will be losing if they sell their stock.

* * * * *

I don't want anyone else to own stock in BANC except Natives. I sure hope something can be worked out before 1991. The Native Corporation is the only thing Natives can really call their own and I hope it stays that way.

* * * * *

People who own shares should be able to sell shares only back to the Corporation and not be able to sell to whites. The Corporation should have a set price in 1991 to buy all shares back from the people who want to sell.

* * * * *

Leave it as it is. What is wrong with being possibly taken over by a giant Corporation? My stock could triple in value.

* * * * *

When your stock is restricted it doesn't mean much to you. You can't do anything with it so what good is restricted stock?

* * * * *

I would like to know when it is possible to sell some of my stock. I am interested in buying a house and a car. Also, I would like to start a college fund.

* * * * *

I believe in December 1991 I will have the right to do whatever I feel like with my own shares--I don't mean I will ever run and sell my shares.

* * * * *

Sell the land now--I need money.

* * * * *

I feel that keeping our land is very important. I think it is okay to develop some of it but not a lot and it should never be sold. When we lose our land what will we have left?

* * * * *

Natives born to shareholders after 1971 should not become shareholders in their own right. Each shareholder would then have a continually reducing piece of property. A will or trust can be used to pass the ownership of one's stock to the surviving heirs, thus preserving the original value of the shareholders equity.

* * * * *

Be careful what you decide--there are a lot of us who depend on your decisions. Have a nice day.

V. Legislation

This brings us to the primary reason we're here today: legislation to preserve Native control and Native lands. Legislation is needed because of ANCSA's original language--language that would lift stock restrictions in 1991.

As I mentioned earlier, BBNC started with the results of the survey. Second, using both in-house and outside expertise, we analyzed the issues of 1991 legally economically and politically. From these, then, came the criteria for legislation that BBNC could support.

Again, BBNC's survey showed that 69 percent of our shareholders want 1991 choices to be made by shareholders at a shareholders' meeting. Not only is this what our shareholders WANT--giving our shareholders a choice is FAIR.

Shareholder choice is important because these are value questions that only our peoples can answer for themselves. An opportunity for a shareholder vote must be built into the law so that our shareholders have a choice on these important issues. Choosing for themselves empowers our peoples to decide their own directions, their own futures.

Therefore, BBNC can support only legislation that gives our shareholders the power of choice.

The survey showed that 63 percent of our shareholders want restricted stock--while 36 percent want it unrestricted. This means BBNC must have a legal way--through legislation--for our shareholders to continue restrictions to preserve Native control. AND--AT THE SAME TIME--this legislation must include a way to allow those who want to go their own way to do so. The usual way to accomplish this is through dissenters' rights.

Above all, it is an issue of fairness. In 1991, the rules of ANCSA will change. As we help shape these new rules, BBNC's directors must serve ALL our shareholders. Dissenters' rights would protect the majority, while creating a procedure to allow the minority to go another way.

It's well understood that buying back dissenters' stock costs money. The amount it costs depends on (1) the number of shareholders who want out, and (2) the value of their stock.

However, the elimination of dissenters' rights creates the risk, unacceptable to us, that stock restrictions would be declared by the courts to be unconstitutional. Unrestricted stock means that Native control would be lost. Therefore, buying out dissenters is, in our view, a necessary price to pay for continued Native control.

BBNC believes the soundest legal approach is to have dissenters' rights--plus dissenters' rights are fair to both the majority and the minority. Therefore, BBNC can support only legislation that includes dissenters' rights for our shareholders.

The survey showed that 57 percent of our shareholders are against letting new Natives into the corporation. Because our shareholders are opposed, BBNC can support only legislation that allows choice by each corporation on this matter.

The survey results showed that 75 percent of our shareholders are against changing to a membership organization, or to any organization which would lessen shareholder protections. Therefore, BBNC can support only legislation that allows choice by each corporation on this matter.

VI. The Future

Today, as in 1971, Congress and Native leaders share a common goal. As stated in the beginning of the Claims Act, this goal is a "just and fair settlement"...a settlement which conforms to "the real economic and social needs of Alaska Natives"...one which allows "maximum participation by Natives in the decisions affecting their rights and property."

Today, BBNC seeks your continued participation in reaching that goal. ANCSA did establish a framework for us. However, it carries what now appears to be a fatal flaw: that of not allowing stock restrictions to continue after

1991. And, as I've stated before, restricted stock is essential to Native control and land protection.

Only Congress can correct this flaw--and give Natives the choice of legally-restricted stock. Shareholder action by itself cannot restrict stock because the courts would not honor it. Therefore, we need your continuing participation to preserve Native control. ANCSA must be amended to permit stock restrictions beyond 1991 and to strengthen land protections.

Thank you.

APPENDIX II

STATE'S POWER TO CONDEMN

Section 13 includes a provision clarifying that Native lands can be condemned for public purposes in accordance with applicable State laws. The provision is included to ensure that nothing in this set of ANCSA amendments is construed as a change to the status quo.

However, various Alaska Native corporations have experienced land condemnation problems, resulting in the government's failure to compensate fairly for the value of subsurface estates.

For example, the State of Alaska has been able to gain ownership of valuable gravel deposits at a fraction of their value. By routing roads over significant gravel resources, the State has condemned lands and valued them as road beds rather than as more expensive gravel deposits. The State has offered compensation to Native corporations for these gravel resources for as little as one percent of the value claimed by the Native corporations.

For example, the State of Alaska has even requested gravel resources without compensation based on a lack of funding. Native corporations should not have to contribute to the construction of a public facility which is clearly the responsibility of the State.

For example, the government fails to recognize separate and distinct values for surface and subsurface estates when condemning Native corporation lands, particularly where ownership is split between village and regional corporations. A separate valuation for subsurface estate is

also important even when the surface and subsurface are commonly owned by a Native corporation. Since the Alaska Native Claims Settlement Act requires that 70 percent of the revenues derived from Native corporations' subsurface estate be placed in the 7(i) revenue pool, it is critical that a precise valuation of the subsurface be made.

For example, the State of Alaska condemns and uses the surface in such a manner as to preclude access to the subsurface, such as in road building or in the preservation of surface resources, yet does not compensate for the subsurface estate.

The problem of undercompensating owners for raw materials derived from condemnation is unique to rural areas. Native corporations holding land in rural areas appear to be treated differently from land owners in the urban areas. Congress should continue monitoring government activities relating to condemnation of Native corporation lands and take corrective action, if necessary.

APPENDIX III

TERM AMENDMENT

Revise proposed subsection 38(e)(1) by striking the period at the end of the first sentence and adding the following text:

either

(A) at any time if such extension was for an indefinite period of time, or

(B) no earlier than 20 years after its effective date if the extension was for a period of time specified in years.

APPENDIX IV

QUALIFIED TRANSFEREE ENTITY AND DISCLAIMER

Specifically, Section 12 could be struck and Section 21 redrafted as follows:

No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act or action taken pursuant to this Act shall increase, decrease, modify, transform or otherwise affect the civil or criminal jurisdiction which existed prior to the date of enactment of this Act over lands and interests in lands conveyed to a Native corporation pursuant to the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act.

Senator MURKOWSKI. Thank you very much, Mr. Nielsen.

The last member of the panel from the Bristol Bay Native Corporation village representative to the Alaska Federation, president of Aleknigik Village Corporation, Dillingham, Joe Chythlook. Nice to have you with us. Please proceed, Joe.

STATEMENT OF JOE CHYTHLOOK, BBNC VILLAGE REPRESENTATIVE TO AFN, PRESIDENT OF ALEKNIGIK VILLAGE CORP.

Mr. CHYTHLOOK. Thank you for the opportunity to testify today, Mr. Chairman. For the record, my name is Joe Chythlook. I sit on an AFN board as a representative from Bristol Bay village, and also, as mentioned, I am chairman of the Board of Alaska Natives, Limited. I would like to also have you note that I am probably the only village corporation member or representative today who is testifying. All the other testimonies you heard are probably from regional corporations and other interest groups.

I believe that from the village corporation stance that 1991 legislation is needed this year. We went through the same exercise and rigamarole last year, and came up with nothing. I would like to urge that legislation be moved this year as quickly as possible. I understand that all the issues discussed today are important. I think we need to keep in mind that we are dealing with amendments to 1971 Act rather than some other Acts that we could probably try to imply into this legislation.

I come from Bristol Bay, as mentioned. I represent 29 villages and I have talked with some of our village corporations and they feel that from the village corporation stance we need legislation to further protect our village corporations. Bristol Bay villages are probably—I can go on record as saying that they are ones who are trying to make this corporation idea survive, and we have dealt with it here for 15 years or so, and to try to come up with some other means at this time, I think, would be, you know, it would be more confusing to some of our native people in the State, not only in Bristol Bay.

So at this time I do not have any written testimony. I do not have a lawyer here to tell me what to say, but I do say that we do need legislation which will protect our village interests, and I support legislation which was similar to the one that was introduced in the Senate last year where it provided automatic extension and restrictions to the stock and also automatic land bank protection for village corporations.

If the idea of having regional corporations having that same provision, that extension, will bog that down, I would like to go on record as saying that, you know, if that will bog it down I would rather that the regional corporations give up their idea of having automatic extensions and to suggest that we as villages, you know, have that protection rather than—it seems like that legislation and the hearing that you held concerning legislation often times gears around region versus region, and that is probably why that the native people of Alaska have not been able to come to a consensus, but I think on the village level if you will go and talk to the village people in their own home town, you will find that they do want legislation fast, and I would like to request that—my personal feeling

is that we need legislation this year, and whatever is passed, if there are problems, I think we can work around them, but we do need something started rather than waiting and hoping that something will happen between now and 1991.

Thank you.

Senator MURKOWSKI. Thank you very much, Joe. I think you have stated the position of the villages you represent very eloquently. We are most appreciative that you have come down here to be heard. I think you have enunciated my basic position perhaps better than I had previously, and that is that the objective and desire of the legislation is specifically to protect the rights of the Alaska native people and to ensure the control of their land remains in the hands of Alaska's native people, kind of like keeping your eye on the ball, I guess.

I have got one question for the panel. It is based, I think, perhaps on a reference made by Mr. Nielsen as to the position of the other regional corporations, two of which are represented on the panel, inasmuch as they have been named as being supportive of the Senate legislation and Sealaska, whose position is qualified.

My question specifically is, if presented with the choice of passing the Senate bill 1145 this year or waiting until the 101st Congress convenes in hopes of getting a bill with the opt out and discretionary dissenters' rights, which would you choose, and I might start with Mr. Nielsen, who brought the matter up.

Mr. NIELSEN. Well, I will put it this way, Senator. The wheel has been invented, and we are looking for quick action. We want to see the process move along so that we still have legislation this year. We cannot afford the time to wait for the next Congress because of the time commitment that my company will need to do the proper shareholder education, and as Senator Stevens said this morning, surely there is going to be some litigation involved in it. So we do not have the luxury of time before us. We need to act today. We think that the areas that I mention in my testimony, sovereignty is one of them. I think that, you know, we cannot let those things drag and swamp the whole bill, that we make the changes, make the cuts, and continue, move forward.

Senator MURKOWSKI. The other question I would like you to follow up on is, by your testimony the Chair concludes that basically Koniag and the Aleut League are with Bristol Bay in this regard, and I would defer to Mr. Huhndorf and Mr. McNeil for the position of their corporations. Mr. McNeil.

Mr. MCNEIL. Yes. Mr. Chairman, Sealaska is in favor of quick and effective action, too, but not at any price. We are very much in favor of the opt out position and discretionary dissenters' rights. We certainly recognize, though, that this legislation is a deliberative process and it will involve continued discussions, and certainly we favor continuing the dialogue, and we are hopeful that we are not left with a whole series of either/or choices like that, because in this respect on the opt out and on the discretionary dissenters' rights we feel strongly enough that we would not favor legislation without it.

Senator MURKOWSKI. Mr. Huhndorf.

Mr. HUHDORF. As I had mentioned earlier, Mr. Chairman, we are in favor of legislation this year, very strongly so, I might add,

and we would urge the Senate to move quickly toward that end. The three concerns I mentioned are concerns. The first two, the opt in, opt out question, I state my position mainly for the benefit of the other corporations. It makes not much difference to CIRI whether we have only an opt in choice and not an opt out one, but I think that in the interest of compromise and getting the AFN group together, it might be wise to consider an opt in, opt out for the regions.

Secondly, on the dissenters' rights, again we have opt in, opt in for—a choice to either opt in or opt out for the regions as is now the case with villages.

Senator MURKOWSKI. And the villages, leave them opt out?

Mr. McNeil. Villages are currently opt out. Yes, you would leave them in that way. Secondly on the dissenters' rights again we are not hard on this provision. We can live with mandatory dissenters' rights very nicely, but again for the purpose of compromise perhaps we should consider an optional dissenters' rights provision.

And thirdly on the disclaimer, we feel fairly strongly about the disclaimer. I think it is a dangerous disclaimer. I think it goes beyond neutrality on sovereignty. And I think that the QTE should be eliminated if the disclaimer is to remain as it is and if the QTE provision is causing that disclaimer to remain in the bill. Again, if whatever the Senate decides, I think we will go along with rather than see delay, but our strong preference would be to see a modification of the QTE if not elimination of that provision so that the disclaimer can be either eliminated or watered down considerably. We think it is a dangerous precedent to put into Federal legislation with respect to the services that native people get in Alaska and have historically gotten.

In sum, we strongly urge you to move quickly with this bill, Mr. Chairman.

Senator MURKOWSKI. I appreciate your concern and expression over anything that would detract from the traditional services and obligation of the Federal government. I am sure you are aware of the dilemma that the delegation is in as expressed by the Senate bill specifically and as enunciated and highlighted to a degree by Mr. Katz representing the position of the State of Alaska with regard to sovereignty. We open up a whole new side of the sovereignty issue if indeed there is a case to be made by the 1991 amendments for sovereignty and the other interests in the State that are specifically in objection to any other form of government that would supersede the authority of the State in its current operation or as implied under the State constitution is where we get into this broad area of concern, and that is the basis, as you know, for disclaimer language in the question is, has it gone too far, is it inappropriate?

I have tried to enunciate what I believe is the concern of the delegation again that whatever was implied previous stays, but this does not expand, and that is where we continually come in conflict with those that would suggest that by so doing so we are leaning the other way. I guess what we are basically attempting to do is to convey legislative intent on such a way so we do not leave the door open for litigation where the State's position would be eroded by an interpretation that would imply that indeed there was something

in 1991 that fosters sovereignty, so I do not expect an answer. I am just generalizing.

Let me ask you this, and I will ask it of Chris. It will be my last question. In the event that we cannot reach a basic consensus between the Native communities collectively or individually and/or the State, would you, since you say you will not support the proposed legislation at any price, support addressing those corporations that have indicated that they would take an expedited 1991 position as generalized by the testimony here today by two of the corporations assuming that both Koniag and the Aleut were supportive as well? My question is a leading one. I am just asking, obviously, whether there would be objection within the Native community towards expediting those that wanted to go with an expedited version.

Mr. McNEIL. Yes, I believe that we would object to that position, and it would seem like not to make a lot of sense also from the economy of the time of Congress as well.

Senator MURKOWSKI. I appreciate that. I just wanted to make that point in case somebody came up and said, well, what if? I do not have any further questions, gentlemen. I think that the questions that were asked previously need not be repeated to this panel, and again, Joe, I want to thank you for your testimony. I wish you a good day, and again would invite you to be with us this evening or this afternoon late. I believe Mr. Silver is itching to use the microphone.

Mr. SILVER. Senator, if we could just put one thing on the record for BBNC, I expected that you might ask us the question about the automatic extension as you did some of the other panel witnesses. From BBNC's perspective an extension is very unsatisfactory. It does not deal with the—I think it raises any of the legal issues that are already on the table, particularly as enunciated in the Department's testimony, and it does not provide the ability to make solutions, which is what BBN and, I think, a number of the other corporations want to accomplish. So I just wanted to put that on the record in the testimony.

Senator MURKOWSKI. I appreciate that, Mr. Silver. Thank you.

Our last panel will be Mr. Jack Hession, Alaska representative, Sierra Club, from Anchorage, and Maitland Sharpe, conservation director of the National Izaak Walton League in Arlington, Virginia. Jack, we look forward to your testimony. You can proceed in any manner. I am sure that after sitting through most of the morning, why, you are well versed on the subject. I see you have got testimony. I have your statements. Please proceed.

STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB

Mr. HESSION. Thank you, Mr. Chairman. With your permission, I would like to submit my statement for the record, summarize it, and also—

Senator MURKOWSKI. It will be entered into the record.

Mr. HESSION. Also, if I may, Mr. Chairman, I would like to submit a legal analysis and some suggested amendments plus the

latest Alaska land bank agreement for the record as well. I refer to them in my testimony.

Senator MURKOWSKI. They will be entered into the record.

Mr. HESSION. Thank you, Mr. Chairman.

First of all, I would like to express the Sierra Club's strong support for the basic thrust of this legislation, that is, the protection of the Settlement Act lands against involuntary loss due to various factors. Just as we supported the 1971 Act itself, we supported amendments over the years, and of course in the Alaska Lands Act of 1980 a whole host of amendments to the Settlement Act as well. However, in this legislation before us today we have two areas of interest and concern. One has to do with the Alaska land bank, which was established in the Act of 1980, and the second has to do with the question of the effect of these bills on sovereignty. Let me take those in turn.

Senator MURKOWSKI. If you would speak perhaps a little louder.

Mr. HESSION. Yes, sir. Is that better?

Senator MURKOWSKI. That is fine, Jack. Thank you.

Mr. HESSION. On the Alaska land bank, we believe that at long last it is successfully launched, and that there is no justification for at this point weakening it. Until fairly recently, until about this time last year, there were no land bank agreements, but there were two reasons for that, Mr. Chairman.

As you know, native corporation lands were not subject to taxation until 20 years after conveyance, so many corporations still have that 20-year period running. Secondly, Section 907(d) of the 1980 Act establishing the bank provides an automatic extension of these immunities until three years after date of conveyance of lands or the end of 1983, whichever comes later. Therefore until the end of 1983 there is not really any incentive to begin utilizing the bank.

Since then, however, there have been two land bank agreements signed and two more are currently in the works. We urge the Subcommittee to give this experiment, and that is what it is, a fair shake. Let us see how it works out in the future, perhaps improve it, but certainly at this stage we think it is premature to adopt provisions which would have the effect of essentially closing the bank, or at least keeping most customers away.

I just want to point out that there are hundreds of thousands of acres now in that bank, and several hundred thousand acres more in the works. Therefore it is clear that the mechanism is working. In view of this successful beginning, we would recommend that you delete section 13 of your bill, Senator. Section 13 provides three immunities automatically that under current law require the corporation to enter into a land bank agreement in order to achieve. Your bill also adds two more, which we can support, by the way, it adds two more automatic immunities, one against loss of land due to bankruptcy or other insolvency, and another against loss of land due to involuntary dissolution of the corporations.

We support both of those immunities and recommend that you simply provide for them elsewhere in the Act.

There is another flaw that we see in section 13 as now written, and that is that the definition of development, despite the plaudits given it here this morning, is in our view quite weak. It contains

major loopholes, and it is loosely worded to the point where I do not think it would achieve the objective intended, that is, protection of undeveloped lands. It provides for a considerable amount of development, such things as roads, dams, perhaps railroads, ports and associated facilities, and "other actions."

Now, that phrase there is itself left undefined, and I would urge the Subcommittee if it is going to use that definition to tighten it down somewhat, and I cannot resist finally in commenting on Mr. Mitchell's observations. He and I have been debating this one for years, and it is ironic, I think, that Mr. Mitchell is one of the authors of the original provision, and now he has apparently lost faith in the bank. But his point was, as I heard him, that this mechanism is too cumbersome, too unworkable for many of the village corporations. As I have tried to point out, it is now working, and a number of these village corporations are involved in these agreements.

Furthermore, I think that if some individual village corporation is having difficulty, then there are a number of avenues they can take. They can seek help from a whole host of Alaska native organizations or friendly groups, such as the Alaska legal services, the AFN, the regional corporations themselves, the Alaska Native Foundation, and I would suggest even the Federal and State agencies. They are in business, they are enthusiastic about this, particularly the U.S. Fish and Wildlife Service, and they are eager to see this experiment succeed, Senator. And I do not share Mr. Mitchell's lack of faith in the mechanism. So therefore we would urge you to maintain the existing land bank and give it a chance.

Our other basic concern is the effect of this legislation on the issue of sovereignty. We would urge the Committee to adopt a bill that is strictly neutral on this issue.

Senator MURKOWSKI. Do you have any specific suggestion on how to do that?

Mr. HESSON. Yes, sir, I am getting to that. I was going to say that if Congress decides to deal with the issue, we would prefer that it do so directly in separate legislation. It has enormous ramifications for Alaska and Alaska society, both native and non-native, and therefore it deserves a separate forum. To deal with it directly as we do in this legislation is in our view inappropriate. Having said that, we recommend that the disclaimer in your bill over the comparable disclaimer in the House bill, yours and Senator Stevens' is, in our view, far preferable because it seems to be far stronger, more explicit and comprehensive.

I want to emphasize, though, that we are not—

Senator MURKOWSKI. Just for the record, since you brought up the question of the debate that you and Mr. Mitchell have had for some time over the land bank, and your contention that he was one of the draftees of the legislation encouraging that, and your contention that it is working and his contention that it is far too cumbersome to work, the experience we have had has been some of the land in the kuskokwim moving into the land bank, and is that specifically what you are referring to as it is working?

Mr. HESSON. Yes, sir, I was referring to the Gana Ayu agreement in the lower Yukon region, the recent Alaska Peninsula agreement, involving several villages. Bristol Bay Native Corpora-

tion itself is currently approaching an agreement with the U.S. Fish and Wildlife Service, and I was told, by the way, by the service in Alaska that there is enthusiasm throughout the Alaska Peninsula, Bristol Bay regions for placing village lands in the land bank, so I think I would stand by my observation that the bank is off and running and ought to be given encouragement.

Senator MURKOWSKI. Please proceed.

Mr. HESSION. Thank you.

Having expressed my preference for the Senate version's disclaimer, I do want to emphasize, Senator, that the Sierra Club and, I think, other conservation organizations are not opposed to the qualified transferee entities per se. As far as we are concerned, whatever form of organization our native friends wish to take to help them maintain their lands in permanent native ownership, that is fine by us.

Our only concern is that the QTEs not be used as a springboard for the future assertion of sovereignty.

In summary, I would suggest that your disclaimer could be improved slightly, at least, through the addition of a savings clause which says in effect that nothing in this Act or the Settlement Act, let us say nothing in this Act should affect the authority, the existing authority of the State of Alaska to regulate and manage land and natural resources in Alaska. More of a positive approach, reaffirming the status quo. That indeed is our basic interest here, that the status quo be preserved with respect to existing governmental relationships.

I think, Mr. Chairman, in view of the time, that concludes my remarks. Thank you very much for this opportunity to testify.

[The prepared statement of Mr. Hession follows:]

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STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB

ON

S.1145 AND H.R. 278, ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS OF
1987

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

WASHINGTON, D.C.

MAY 19, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM JACK HESSION, ALASKA REPRESENTATIVE OF THE SIERRA CLUB, WHICH IS A NATIONAL ENVIRONMENTAL ORGANIZATION OF 408,000 MEMBERS WITH CHAPTERS IN NEARLY EVERY STATE, INCLUDING ALASKA.

WE SUPPORT AMENDING THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PREVENT THE INVOLUNTARY LOSS OF NATIVE LANDS AFTER 1991.

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"When we try to pick out anything by itself, we find it hitched to everything else in the universe." John Muir
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HOWEVER, S. 1145 AND H.R. 278 GO BEYOND THIS PURPOSE IN TWO WAYS. FIRST, THEY UNDERMINE THE ALASKA LAND BANK, AN IMPORTANT CONSERVATION PROVISION OF THE ALASKA NATIONAL INTEREST LANDS ACT OF 1980. SECOND, THEY NEED FURTHER IMPROVEMENT TO PRESERVE THE STATUS QUO WITH RESPECT TO SOVEREIGNTY. WHILE THE PROVISIONS OF S. 1145 ON SOVEREIGNTY ARE SUPERIOR TO THOSE IN H.R. 278, WE RECOMMEND ADDITIONAL AMENDMENTS.

ALASKA LAND BANK

AT THE REQUEST OF THE ALASKA NATIVE COMMUNITY, CONGRESS ESTABLISHED THE ALASKA LAND BANK IN SEC. 907 OF THE ALASKA LANDS ACT. THE BANK IS INTENDED TO PROMOTE THE RETENTION OF ANCSA LANDS IN NATIVE OWNERSHIP, AND AT THE SAME TIME ENHANCE THE MANAGEMENT OF ADJACENT FEDERAL AND STATE LAND MANAGEMENT UNITS.

NATIVE (OR OTHER PRIVATE) LAND DEPOSITED IN THE BANK AND LEFT UNDEVELOPED RECEIVES IMMUNITY FROM REAL PROPERTY TAXATION, FROM ADVERSE POSSESSION, AND FROM LOSS TO CREDITORS. A DEPOSITOR CAN ALSO RECEIVE, DEPENDING UPON THE SPECIFIC LAND BANK AGREEMENT, ASSISTANCE IN LAND USE PLANNING, FIRE AND TRESPASS CONTROL, AND RELATED PROGRAMS.

IN RETURN FOR THESE BENEFITS, THE DEPOSITOR AGREES TO MANAGE ITS LAND IN A MANNER CONSISTENT WITH THE MANAGEMENT PLANS OF ADJACENT FEDERAL OR STATE LAND. IN ADDITION, THE FEDERAL AND STATE AGENCIES MAY HAVE ACCESS TO THE NATIVE LAND FOR RESEARCH, MANAGEMENT, AND ADMINISTRATIVE PURPOSES. PUBLIC ACCESS COULD ALSO BE AVAILABLE FOR RECREATIONAL PURPOSES.

THUS THE ESSENCE OF THE LAND BANK IS A QUID PRO QUO. NATIVE CORPORATIONS RECEIVE TAX IMMUNITY, IMMUNITIES AGAINST LOSS OF THE LAND, AND LAND MANAGEMENT BENEFITS. THE PUBLIC RECEIVES ASSURANCES THAT THE NATIVE LAND WILL BE MANAGED COMPATIBLY AND COOPERATIVELY WITH FEDERAL AND STATE LAND.

BECAUSE OF THE SUBSTANTIAL AMOUNT OF NATIVE LAND INSIDE AND ADJACENT TO THE NATIONAL CONSERVATION SYSTEM UNITS, THE LAND BANK IS ACCOMPLISHING

TWO OF CONGRESS'S PRIMARY OBJECTIVES IN ALASKA: (1), PROTECTING THE NATIVE SUBSISTENCE ECONOMY THAT IS BASED ON INTACT AND PRODUCTIVE FISH AND WILDLIFE HABITATS ON NATIVE LANDS AND NATIONAL CONSERVATION UNITS, AND (2), AVOIDING INCOMPATIBLE DEVELOPMENT AND USE OF PRIVATE LAND HOLDINGS WITHIN AND ADJACENT TO THE CONSERVATION UNITS.

WHEN THE LAND BANK AMENDMENT OF S. 1145 WAS FIRST PROPOSED IN EARLIER VERSIONS OF THE BILL, THERE WERE NO LAND BANK AGREEMENTS. CRITICISM WAS HEARD THAT THE BANK WAS UNUSED BECAUSE THE PROCESS LEADING TO AGREEMENTS WAS TOO CUMBERSOME AND TIME-CONSUMING FOR MOST NATIVE CORPORATIONS.

BUT THE REAL REASON FOR THE LACK OF AGREEMENTS WAS THE FACT THAT SECTION 907(D) OF THE ALASKA LANDS ACT PROVIDES FOR AN AUTOMATIC GRANT OF THE TAX AND OTHER IMMUNITIES OF THE LAND BANK FOR THREE YEARS FROM THE DATE OF CONVEYANCE OR UNTIL THE END OF 1983, WHICHEVER IS LATER, WITHOUT A REQUIREMENT TO DEPOSIT LAND IN THE BANK.

SINCE 1983, SEVERAL CORPORATIONS HAVE BEEN NEGOTIATING LAND BANK AGREEMENTS. IN APRIL OF LAST YEAR, THE U.S. FISH AND WILDLIFE SERVICE SIGNED AN AGREEMENT WITH THE FOUR-VILLAGE GANA-A'-YOO CORPORATION THAT INVOLVES THE BANKING OF ABOUT 400,000 ACRES OF CORPORATION LANDS WITHIN AND ADJACENT TO THE KOYUKUK NATIONAL WILDLIFE REFUGE.

IN APRIL OF THIS YEAR, THE ALASKA PENINSULA CORPORATION, REPRESENTING FIVE VILLAGE CORPORATIONS IN THE BRISTOL BAY-ALASKA PENINSULA AREA, DEPOSITED 370,000 ACRES IN THE LAND BANK AS PART OF AN AGREEMENT WITH THE FISH AND WILDLIFE SERVICE AND THE NATIONAL PARK SERVICE INVOLVING THE ALASKA PENINSULA AND BECHAROF NATIONAL WILDLIFE REFUGES AND KATMAI NATIONAL PARK AND PRESERVE.

FOLLOWING THE ALASKA PENINSULA AGREEMENT, FIVE OTHER BRISTOL BAY AREA CORPORATIONS PROPOSED AN ADDITIONAL 673,000 ACRES FOR ADDITION TO THE LAND BANK.

CURRENTLY, A LAND BANK AGREEMENT BETWEEN THE FISH AND WILDLIFE SERVICE AND THE BRISTOL BAY NATIVE (REGIONAL) CORPORATION IS IN THE FINAL STAGES

OF AGENCY REVIEW, AND IS EXPECTED TO BE SIGNED NEXT MONTH. THIS AGREEMENT WOULD PLACE 200,000 ACRES OF BBNC'S SURFACE ESTATE AND 2,500,000 ACRES OF ITS SUBSURFACE ESTATE IN THE LAND BANK.

WITH THE PERMISSION OF THE COMMITTEE, I AM INCLUDING A COPY OF THE ALASKA PENINSULA CORPORATION LAND BANK AGREEMENT FOR THE HEARING RECORD.

EFFECT OF S. 1145 ON THE ALASKA LAND BANK

SEC. 13 OF S. 1145 TAKES THE THREE IMMUNITIES THE LAND BANK AFFORDS DEPOSITED LANDS--EXEMPTIONS FROM REAL PROPERTY TAXATION, ADVERSE POSSESSION, AND LOSS TO CREDITORS--AND ADDS TWO MORE: FROM LOSS OF LAND AS A RESULT OF BANKRUPTCY OR OTHER INSOLVENCY, AND FROM LOSS OF LAND DUE TO INVOLUNTARY DISSOLUTION OF A NATIVE CORPORATION.

BUT UNLIKE THE PRESENT LAND BANK, WHICH GRANTS THE THREE IMMUNITIES ONLY TO LANDS DEPOSITED IN THE BANK, SEC. 13 GRANTS ALL FIVE IMMUNITIES AUTOMATICALLY WITHOUT THE DEPOSIT REQUIREMENT.

AND ALTHOUGH SEC. 13 GRANTS THE FIVE IMMUNITIES ONLY IF THE NATIVE LANDS ARE LEFT UNDEVELOPED, ITS DEFINITION OF DEVELOPMENT CONTAINS SIGNIIFICANT LOOPHOLES. ROADS, MINERAL EXPLORATION, AND "UTILITIES OR OTHER SIMILAR ACTIONS" ARE ALLOWED. "UTILITIES AND OTHER SIMILAR ACTIONS" COULD PRESUMABLY INCLUDE AIRPORTS, PORTS, POWER STATIONS INCLUDING HYDROELECTRIC DAMS, AND RELATED DEVEOPMENTS. EXPLORATION FOR OIL AND GAS AND HARD ROCK MINERALS CAN ENTAIL ROADS, CAMPS, AIRSTRIPS AND OTHER DEVELOPMENTS.

SEC. 13 SEVERELY REDUCES AND PROBABLY ELIMINATES THE PRIMARY INCENTIVES FOR DEPOSITS TO THE LAND BANK. WE ASSUME THAT FEW NATIVE CORPORATIONS, INDIVIDUAL NATIVE LANDOWNERS, OR OTHER NATIVE ENTITIES WOULD BOTHER TO PLACE LAND IN THE BANK, IF THE KEY BENEFITS OF DOING SO ARE AVAILABLE TO THEM AUTOMATICALLY.

WE BELIEVE IT IS IN THE NATIONAL INTEREST TO RETAIN THE EXISTING LAND BANK UNCHANGED. LANDS PLACED IN THE BANK ARE MANAGED COOPERATIVELY AND

COMPATIBLY WITH ADJACENT PUBLIC LANDS, WHICH IS A PUBLIC BENEFIT ESPECIALLY VALUABLE IN THE CASE OF ANILCA CONSERVATION SYSTEM UNITS AND, POTENTIALLY, SIMILAR STATE CONSERVATION UNITS. BY CONTRAST, SEC. 13 REQUIRES NO COMPATIBLE MANAGEMENT OR OTHER RESPONSIBILITIES IN RETURN FOR A SWEEPING GRANT OF IMMUNITIES THAT NO OTHER CITIZENS OR NON-NATIVE CORPORATIONS ENJOY.

SEVERAL HUNDRED THOUSAND ACRES ARE NOW IN THE BANK, AND NATIVE CORPORATIONS AND NATIONAL CONSERVATION SYSTEM UNITS ARE BOTH BENEFITING AS CONGRESS INTENDED. SEVERAL HUNDRED THOUSAND MORE ACRES ARE DUE TO BE DEPOSITED SHORTLY. AND AS A RESULT OF ITS EXPERIENCE TO DATE, THE U.S. FISH AND WILDLIFE SERVICE HAS DEVELOPED A MODEL LAND BANK AGREEMENT INTENDED TO SIMPLIFY AND STREAMLINE THE APPLICATION PROCESS.

GIVEN THE SUCCESS OF THE BANK, THE APPROPRIATE RESPONSE IS TO LEAVE IT ALONE FOR A SUITABLE PERIOD, AND REVIEW ITS PERFORMANCE LATER. ACCORDINGLY, WE URGE THE SUBCOMMITTEE TO DELETE SEC. 13 OF S. 1145.

THE TWO NEW IMMUNITIES (FROM LOSS OF LAND DUE TO BANKRUPTCY OR INVOLUNTARY DISSOLUTION OF A SETTLEMENT ACT CORPORATION) FURTHER THE PURPOSES OF THE SETTLEMENT ACT AND CAN BE PROVIDED FOR IN A SEPARATE SECTION OF S. 1145.

SOVEREIGNTY

A SUMMARY OF OUR POSITION ON SOVEREIGNTY FOLLOWS. I AM SUBMITTING SEPARATELY A DETAILED LEGAL ANALYSIS ON WHICH IT IS BASED, AND SOME SUGGESTED AMENDMENTS, BOTH PREPARED BY GEOFFREY PARKER, AN ATTORNEY WITH THE ALASKA OFFICE OF THE SIERRA CLUB. WHILE THE ANALYSIS FOCUSES ON H.R. 278, AS PASSED BY THE HOUSE, IT IS GERMANE TO THE SAME ISSUES ADDRESSED BY S. 1145. WITH THE PERMISSION OF THE SUBCOMMITTEE, I WOULD LIKE TO SUBMIT THEM FOR THE RECORD OF THIS HEARING.

AS SECRETARY OF THE INTERIOR DONALD HODEL SAID IN HIS LETTER OF MARCH 4, 1987 TO THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE, H.R. 278 RAISES "A SERIOUS QUESTION OF SOVEREIGNTY OVER CERTAIN LANDS IN ALASKA."

THE ANALYSIS OF SOVEREIGNTY SHOWS HOW IT CAN ARISE. IT MAKES TWO MAJOR POINTS. FIRST, SOVEREIGNTY WILL NOT COME ABOUT DIRECTLY THROUGH THE PROVISIONS OF EITHER H.R. 279 OR S. 1148, BUT SOVEREIGNTY COULD BE ACHIEVED BECAUSE OF THE ABILITY TO CREATE SOVEREIGN POWERS UNDER THE INDIAN REORGANIZATION ACT, CREATE TRIBAL STATUS UNDER DEPARTMENTAL REGULATIONS, AND CREATE INDIAN COUNTRY BY COURT DECISION UNDER PRIOR CASE LAW. SUCH EVENTS ARE MOST LIKELY TO OCCUR AFTER SETTLEMENT ACT LANDS ARE TRANSFERRED TO A TRANSFEREE ENTITY. THEREFORE, THE DISCLAIMER IN THE BILLS MUST ADDRESS SUCH POTENTIALITIES IF THE 1991 AMENDMENTS ARE TO PRESERVE THE STATUS QUO WITH RESPECT TO SOVEREIGNTY.

A SECOND MAJOR POINT IS THAT SOVEREIGNTY INVOLVES TWO BROAD AREAS OF NATIVE SELF-GOVERNMENT, AS SHOWN REPEATEDLY BY THE CASE LAW. THOSE AREAS ARE CONTROL OVER THE INTERNAL AND SOCIAL RELATIONS OF INDIANS, AND CONTROL OVER LAND AND NATURAL RESOURCES. SOME PROponents OF SOVEREIGNTY SAY GENERALLY THAT THE SETTLEMENT ACT LEFT SOVEREIGNTY UNADDRESSED. SUCH STATEMENTS ARE NOT ACCURATE, FOR THEY OBFUSCATE THE PROVISIONS OF THE ACT AND ITS LEGISLATIVE HISTORY.

IT IS MORE ACCURATE TO SAY THAT THE ACT POSSIBLY LEFT OPEN THE QUESTION OF SOVEREIGNTY OVER INTERNAL AND SOCIAL RELATIONS, BUT IT IS CLEAR THAT THE ACT DOES NOT PERMIT SOVEREIGNTY OVER LAND AND NATURAL RESOURCES. IN ORDER TO PRESERVE THE STATUS QUO AND BE NEUTRAL, THE 1991 AMENDMENTS SHOULD RECOGNIZE THIS DISTINCTION.

THE STARTING POINT IN ANY ANALYSIS OF THE EFFECT OF THE SETTLEMENT ACT ON SOVEREIGNTY IS SECTION 2 OF THE ACT. IT ESTABLISHED THE POLICY THAT THE SETTLEMENT WAS TO BE ACCOMPLISHED WITHOUT ESTABLISHING RACIALLY DEFINED INSTITUTIONS, RIGHTS, PRIVILEGES, OR OBLIGATIONS; WITHOUT CREATING RESERVATIONS, WARDSHIP, AND TRUSTEESHIP; WITHOUT ESTABLISHING SPECIAL CATEGORIES OF PROPERTY OR TAX PRIVILEGES; WITHOUT ESTABLISHING SPECIAL RELATIONSHIPS BETWEEN THE STATE AND FEDERAL GOVERNMENTS WITH RESPECT TO ALASKA NATIVES; WITHOUT BEING A JURISDICTIONAL ACT; AND WITHOUT DIMINISHING THE AUTHORITY OF THE STATE.

PROponents OF SOVEREIGNTY INTERPRET THESE POLICY STATEMENTS TO MEAN THAT

CONGRESS SETTLED THE ALASKA NATIVE LAND CLAIMS WITHOUT ADDRESSING SUCH ISSUES. OPPONENTS OF SOVEREIGNTY INTERPRET THESE POLICY STATEMENTS AS PROHIBITIVE OF THE MATTERS ADDRESSED. THEREIN LIES THE DISPUTE OVER THE EFFECT OF THE SETTLEMENT ACT ON ISSUES OF SOVEREIGNTY. IT IS A DISPUTE OVER WHETHER THE ACT AMOUNTED TO A DECISION NOT TO ADDRESS SUCH ISSUES OR WHETHER THE ACT WAS PROHIBITIVE.

EVEN IF THE SETTLEMENT ACT LEFT SOVEREIGNTY OVER INTERNAL AND SOCIAL RELATIONS UNADDRESSED, THE LEGISLATIVE HISTORY SHOWS CONGRESS CLEARLY INTENDED TO PROHIBIT SOVEREIGNTY OVER LAND AND NATURAL RESOURCES. THE ACT WAS MEANT TO "PUT AN END TO RACIAL AND ETHNIC DISTINCTIONS IN LAND TENURE." SENATE REPORT NO. 92-405, 92ND CONG., 1ST SESS. 79.

SOVEREIGNTY OVER NATURAL RESOURCES WOULD BE A RACIAL AND ETHNIC DISTINCTION IN LAND TENURE. "A MAJOR PURPOSE OF ... CONGRESS [WAS] TO AVOID PERPETUATING THE RESERVATION AND TRUSTEE SYSTEM WHICH HAS CHARACTERIZED THE RELATIONSHIP OF THE FEDERAL GOVERNMENT TO INDIAN PEOPLES IN THE CONTIGUOUS 48 STATES." ID, AT 108. A RESERVATION SYSTEM WOULD HAVE MEANT INDIAN COUNTRY UNDER FEDERAL LAW, 18 U.S.C. 1151, AND WOULD INVOLVE SOVEREIGNTY OVER CIVIL REGULATORY AUTHORITY, INCLUDING REGULATORY AUTHORITY OVER NATURAL RESOURCES. THAT THE ACT PROHIBITED SOVEREIGNTY OVER NATURAL RESOURCES IS SUPPORTED BY THE FACT THAT THE ACT CONVEYED LANDS TO PRIVATE CORPORATIONS RATHER THAN TRIBES AND BY THE FACT THAT SIXTEEN YEARS OF INTERPRETATION AND IMPLEMENTATION OF THE ACT HAVE CONSISTENTLY MAINTAINED STATE REGULATORY AUTHORITY OVER SETTLEMENT ACT LANDS AND THE RESOURCES ON AND WITHIN THEM.

THE SIERRA CLUB SUGGESTS THE FOLLOWING AMENDMENTS TO S. 1145.

FIRST, A SAVINGS CLAUSE FOR STATE AUTHORITY OVER NATURAL RESOURCES SHOULD BE ADDED TO THE DISCLAIMER IN SECTION 21 OF S. 1145. SUCH AN ADDITION WOULD PRESERVE THE STATUS QUO OF STATE AUTHORITY OVER NATURAL RESOURCES, WOULD IMPLEMENT CONGRESSIONAL INTENT TO "PUT AN END TO RACIAL AND ETHNIC DISTINCTIONS IN LAND TENURE," BUT WOULD ALLOW CONTINUED DEBATE ABOUT SOVEREIGNTY OVER INTERNAL AND SOCIAL RELATIONS.

THE ATTACHED SUGGESTED AMENDMENT SUGGESTS PHRASEOLOGY, MODELED AFTER SEC. 21 IN S. 1145, FOR ADDING A SAVINGS CLAUSE AND IMPROVING THE DISCLAIMER, AS WELL AS A DETAILED RATIONALE. THE KEY POINT OF OUR SUGGESTION IS THAT A SAVINGS CLAUSE AND A DISCLAIMER SHOULD ADDRESS THE SECRETARY'S POWER UNDER THE INDIAN REORGANIZATION ACT, HIS POWER UNDER DEPARTMENTAL REGULATIONS TO RECOGNIZE TRIBAL STATUS, AND THE POWER OF THE COURTS TO DETERMINE INDIAN COUNTRY AND FIND SOVEREIGN POWERS UNDER COMMON LAW PRINCIPLES, CASE LAW AND OTHER STATUTES DEALING WITH NATIVES.

SECOND, WE ALSO URGE THAT SECTION 2 OF S. 1145, WHICH CONTAINS FINDINGS AND POLICY STATEMENTS, BE AMENDED TO BE CONSISTENT WITH PRESEVING EXISTING STATE AUTHORITY OVER NATURAL RESOURCES. SPECIFICALLY, SEC. 2(7) SHOULD BE AMENDED BY:

(1) REWRITING THE PREAMBULATORY CLAUSE TO BE "NO PROVISION OF THIS ACT (THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS OF 1987) OR ACTIONS PURSUANT TO THIS ACT OR OTHER FEDERAL LAW SHALL--"; AND

(2) BY STRIKING THE "OR PERSONS" IN SEC. 2(7)(C) AND ADDING A NEW CLAUSE "(D)" TO SEC. 2(7) TO SAY: "(D) AFFECT THE CIVIL, CRIMINAL, REGULATORY, SUBJECT MATTER AND PERSONAL JURISDICTION AND AUTHORITY OF THE STATE OF ALASKA WITH RESPECT TO PERSONS AND LAND, FISH AND WILDLIFE AND THEIR HABITATS, AND OTHER NATURAL RESOURCES."

IF THE POLICY STATEMENT IN SEC. 2 WERE AMENDED AS WE SUGGEST HERE, THEN IT WOULD BE CONSISTENT WITH THE DISCLAIMER AND SAVINGS CLAUSE WE SUGGEST, AND IT WOULD BE CONSISTENT WITH THE INTENT OF THE SETTLEMENT ACT TO "PUT AN END TO RACIAL AND ETHNIC DISTINCTIONS IN LAND TENURE."

THIRD, WE SUGGEST THAT PARAGRAPH (8) OF SECTION 2 BE DELETED BECAUSE OF THE IMPLICATIONS IT HAS FOR CONSTRUING AMBIGUITIES IN THIS ACT AND THE SETTLEMENT ACT. THOSE IMPLICATIONS ARE DISCUSSED IN THE ACCOMPANYING ANALYSIS OF SOVEREIGNTY.

THANK YOU, MR. CHAIRMAN, FOR THIS OPPORTUNITY TO PRESENT OUR VIEWS.

SECTION 8: DISCLAIMER OF TRIBAL GOVERNMENT

The disclaimer in Section 8 has problems that are discussed at length in the accompanying legal analysis and comments upon H.R. 278. Basically, the structural problem with the disclaimer is that it disclaims only the provisions of H.R. 278 from affecting the "scope" of Native governmental powers. This does not prevent expansion of sovereign powers under the Indian Reorganization Act or through the courts.

In addition to this structural problem, the disclaimer has a conceptual problem. Disclaimers are inherently negative. They speak to what is prohibited, but they are silent and ambiguous with respect to what they ignore -- i.e. state authority.

Section 8 prohibits construing this act as affecting the scope of Native governmental powers. It is silent with respect: (1) the Secretary's powers under the Indian Reorganization to approve constitutions, accept lands in trust, and create reservations, (2) the power of the courts to find sovereign powers under common law principles of sovereignty, case law, and other statutes, (3) the power of the Secretary to afford tribal status under existing regulations, and (4) the power of the courts to determine questions of Indian country. Because the disclaimer is silent with respect to these matters, it is unclear whether it prohibits them even though they could expand the scope of Native governmental powers.

Negative approaches inherently have such problems, and the problem in this case is particularly of concern because the guideline on ambiguities might lead a court to conclude that what is not expressly prohibited is allowed.

A positive approach would be to use a savings clause in addition to a disclaimer. The following suggested amendment includes a savings clause in (a) for state authority over natural resources and disclaimers in (b) and (c) which are modeled after the disclaimers in the 1991 amendments drafted by the Senate last year. This approach preserves the status quo with respect to state and native governmental authority. Since the following suggested amendment is modeled after the disclaimer drafted in the Senate last year, our recommended changes are underlined.

Suggested Amendment:

Strike all of Section 8 and amend it to read:

"SAVINGS CLAUSES AND DISCLAIMERS

Sec. 8. (a) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets to a transferee entity under section 7 of this Act), or

change in the status of Alaska Natives or Native land (including a change in ownership) effected either under this Act, or by the Secretary under federal Indian law, or by the courts in applying such law, shall diminish or preempt the authority of the State of Alaska to regulate and manage the conservation, utilization and development of natural resources, including but not limited to the authority of the State to regulate, protect and manage the use of land and water, harvest of fish and wildlife, fish and wildlife habitat, and pollution.

(b) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets to a transferee entity under section 7 of this Act), or change in the status of Alaska Natives or Native land (including a change in ownership) effected under this Act shall be construed to--

(1) enlarge or diminish or in any way affect the scope of the governmental authority, if any, of any Native organization, including any federally-recognized tribe, traditional Native council, Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended, or qualified transferee entity over lands (including management, or regulation of the taking, of fish and wildlife) or over persons in Alaska;

(2) grant or deny any governmental authority to such Native organization over lands (including management, or regulation of the taking, of fish and wildlife) or over persons in Alaska;

(3) create or validate or invalidate any assertion of such Native organization of any form of governmental authority over lands (including management, or the regulation of the taking, of fish and wildlife) or over persons in Alaska;

(4) validate or invalidate or in any way affect any assertion of tribal status or that Indian country, as defined in 18 U.S.C. 1151, exists or does not exist in Alaska;

(c) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets to a qualified transferee entity under section 7 of this Act), or change in the status of land (including a change in ownership) effected under this Act may be taken into account by the Secretary or any court in authorizing or determining--

(1) the existence of any Native governmental authority described in subsection (a),

(2) the existence of Indian country within the boundaries of the State of Alaska,

(3) any issue related to the existence of any Native governmental authority described in subsection (a) or any Indian country within the boundaries of the State of Alaska, or

(4) the intent of Congress with regard to any of the matters described in paragraphs (1), (2), or (3)."

Sierra Club

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LEGAL ANALYSIS OF NATIVE SOVEREIGNTY AND H.R. 278 AS PASSED BY THE HOUSE OF REPRESENTATIVES

Sierra Club
May 12, 1987

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LEGAL ANALYSIS OF NATIVE SOVEREIGNTY
AND H.R. 278 AS PASSED BY THE HOUSE OF REPRESENTATIVES,
100TH CONGRESS, FIRST SESSION

by Geoffrey Y. Parker
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INTRODUCTION

The Sierra Club strongly supports the desires of Alaskan Natives to retain control of their lands and corporations, which were granted by and established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* However, this support does not translate into unqualified endorsement of H.R. 278.

From a conservation perspective, H.R. 278 has two problems:

I. Although H.R. 278 does not create Native sovereignty or by itself expand the scope of Native governmental powers, H.R. 278 enhances the likelihood of sovereign Native governmental powers over natural resources. Such powers could threaten state regulatory control over natural resources, habitat protection, land use, timber practices, pollution, and harvest of fish and wildlife.

II. Although H.R. 278 does not repeal the Alaska Land Bank, 43 U.S.C. 1636, by which Native corporations receive benefits for agreements to retain and not develop their land, H.R. 278 affords the same benefits to all undeveloped Native land without any agreement to retain and not develop lands. H.R. 278 thereby severely reduces and probably eliminates the incentives for using the Alaska Land Bank.

This paper deals only with the issue of Native sovereignty. Sierra Club testimony on the Alaska Land Bank was submitted to the House Committee on Interior and Insular Affairs during hearings on March 4, 1987.

The concerns over sovereignty are complex. They focus on the interplay of the following factors:

(1) Section 7 of H.R. 278, which allows Native corporations to transfer lands to racially defined, membership based, "qualified transferee entities",

(2) the authority of the Secretary to approve Native governmental powers under the Indian Reorganization Act, 25 U.S.C. 461 *et seq.*

(3) the authority of the courts to determine Native governmental powers,

(4) the authority of the Secretary to approve tribal status under existing regulations, at 25 C.F.R. Part 8),

(5) whether Settlement Act lands, if transferred to a transferee entity, are more likely to be considered Indian Country for purposes of P.L. 280, 67 Stat. 588, as amended, so as to preempt state civil regulatory authority,

(6) immunities and racially defined privileges afforded Natives and Native lands by H.R. 278, and

(7) the questionable effect of the sovereignty disclaimer in section 8 of H.R. 278.

An introductory explanation of these factors is in order.

Section 7 allows transfer of Native corporate lands to "qualified transferee entities." Under section 7, transferee entities are racially defined, membership-based institutions. They bear similarity to tribes and are likely to be traditional tribal councils, or village councils and Native governments organized under the Indian Reorganization Act, that would receive the land and act in behalf of the membership. Section 7 thereby allows merger of land ownership and Native government. In so doing it creates a jurisdictional land base for the exercise of sovereign powers over natural resources, if such powers exist or come to exist.

Such powers could arise by court decisions or by the Indian Reorganization Act. The Indian Reorganization Act of 1934 allows Alaska Natives to organize, draft constitutions for approval by the Secretary of the Interior, and exercise powers under those constitutions. 25 U.S.C. 476. One shortcoming in the debate over H.R. 278 is that there has been little examination of existing Alaska Native village constitutions approved since the Act was made applicable to Alaska in 1936. Many constitutions, such as that of the Village of Deering, contain broad general grants of authority, which authorize the village government "to do all things for the common good which it has done or has had the right to do in the past." Others, such as that of Hyaburg, specifically authorize the village government "to protect the natural resources of the Association." See Fay, Occasional Publications in Anthropology, Ethnology Series, Nos. 16 & 17, "Charters, Constitutions and By-Laws of the Indian Tribes of North America", Parts XV - XVI, University of Northern Colorado, Museum of Anthropology, 1972. Approximately 70 Alaska villages have constitutions approved under the Indian Reorganization Act. As of 1982, approximately 30 others had constitutions pending

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approval by the Secretary. Robert E. Price, Department of Law, State of Alaska, "Legal Status of the Alaska Natives, A Report to the Alaska Statehood Commission," July 30, 1982, at 76. It is impossible to predict what future powers the Secretary will approve unless Congress addresses the issue.

Tribal status is a major premise in any discussion of Federal Indian law and sovereignty. Both Congress, under U.S. Const. art. I, sec. 8, and the Secretary of the Interior, under 25 C.F.R. Part 83, have authority to recognize tribal status. Pursuant to 25 C.F.R. 83.6(b), the Secretary publishes a list of federally recognized tribal entities. Alaska Natives are not listed as tribal entities but are listed as "Native entities". Federal Register, vol. 51, no. 132, p. 25115 (July 10, 1986). This analysis concludes that H.R. 278, when combined with transfers of land under Section 7 and expanded Native governmental powers under the Indian Reorganization Act, would increase the likelihood that the Secretary would eventually recognize tribal status for Alaska Natives, which would be essential to Native sovereignty.

Indian Country is defined as reservations, allotments, and dependent Indian communities. 18 U.S.C. 1151. Although 18 U.S.C. 1151 is a criminal statute, the Supreme Court applies the definition to matters involving civil jurisdiction. DeCoteau v. District County Court, 426 U.S. 425, 95 S.Ct. 1082, 1084 n. 2 (1975). Indian Country is relevant to sovereignty issues because in 1953, Congress enacted a law, popularly known as PL-280, extending state civil and criminal jurisdiction to Indian Country in several designated states, including Alaska. 28 U.S.C. 1360, 18 U.S.C. 1162. Within Indian Country, state civil jurisdiction is limited to civil causes of actions and does not include state civil regulatory authority. See Bryan v. Itasca County, Minnesota, 426 U.S. 373, 96 S.Ct. 2102 (1976). P.L. 280 specifically confirms to tribes the power to regulate hunting, fishing and trapping when those privileges are protected by federal law. 18 U.S.C. 1162(b).

Whether corporate Settlement Act lands are Indian Country is debatable, but it appears they are not because of corporate ownership and the policies of the Settlement Act stated in 43 U.S.C. 1601, *infra*. No court has decided the issue. To be Indian Country they would have to be "dependent Indian communities", since they are not allotments and presently are not reservations. However, if Settlement Act lands were transferred to tribal entities, it is more likely that they would be found to be Indian Country, since the cases finding a dependent Indian community involve tribal land. See, United States v. Martine, *infra*, United States v. Levesque, *infra*. In situations where Indian Reorganization Act constitutions grant authority to protect and manage natural resources, a result of Indian Country status would be the loss of state civil regulatory authority to implement on Native lands many state laws and regulations.

affecting fish and wildlife harvest, timber practices, fish and wildlife habitat, land use, pollution and subsistence protection.

H.R. 278 does not create sovereign powers, tribal status or Indian Country. However, H.R. 278 furthers sovereignty in four basic ways:

- (1) by allowing the creation of a jurisdictional land base,
- (2) by failing to restrict the power of the Secretary or the courts to recognize sovereign powers over natural resources once the jurisdictional land base is in place,
- (3) by failing to address tribal status and Indian Country, and
- (4) by undermining policies and substantive provisions of the Settlement Act that (although the Settlement Act did not expressly prohibit any or all aspects of sovereignty) are contrary to tribal status, Indian Country and aspects of Native sovereignty, particularly with respect to natural resources.

If a transfer of land were combined with tribal status and Native governmental powers over natural resources, then cohesive management of land, pollutants, timber practices, fish, wildlife and their habitats would be threatened. Merging tribal status, land ownership and governmental powers over natural resources would undermine the Congressional intent that the Settlement Act "put an end to racial and ethnic distinctions in land tenure." See Sen. Rept. No. 92-405, 92nd Cong., 1st Sess. 79.

Alaska has upwards of 200 Native corporations. Theoretically, if each transferred their lands to Native governments which acquired sovereign powers over natural resources, then an equivalent number of sovereign governmental entities could conflict with each other and with state authority on natural resource matters.

A separate document, attached, proposes specific amendments to H.R. 278 to address sovereignty. The suggested amendments seek to assure that H.R. 278 is neutral and preserves the status quo of state authority over natural resources on Native lands, while satisfying Native desires to retain control of their corporations and ownership of their lands. However, being "neutral" implies two questionable assumptions that should be understood if the bill is to be truly neutral.

The first questionable assumption is that major provisions of the Settlement Act can be substantially amended by

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H.R. 278 without affecting the status of sovereignty in Alaska. This assumption can only be true if the provisions of the Settlement Act that are amended did not themselves affect the status of sovereignty. The Settlement Act did not expressly prohibit sovereignty, and the effect of the Act on sovereignty may be debatable. However, even advocates of sovereignty, such as the Native American Rights Fund, argue persuasively, *infra*, that numerous policies and substantive provisions of the Settlement Act -- such as the conveyance of lands to private profit-making corporations rather than to tribal governments, the revocation of reservations, the taxability of assets, and the policies against wardship, against racially defined institutions, and against special relationships with the state and federal governments -- clearly affected sovereignty and de-emphasized the role of tribal governments in Alaska, particularly with respect to land tenure and natural resources. Therefore, if the Settlement Act is to be amended substantially to accomplish the goals of H.R. 278, the amendments must be carefully drafted to maintain the status quo with respect to sovereignty.

The second questionable assumption that underlies H.R. 278 is that H.R. 278, if enacted, will operate in isolation from other laws and events. That is rarely the case in legal or political matters. The provisions of H.R. 278 and the events that could occur under it will never exist in isolation from the authority of the Secretary of the Interior to approve constitutions under the Indian Reorganization Act, the authority of the Secretary to approve tribal status, other statutes affording Alaska Natives special privileges, previous court decisions and unforeseeable future court decisions, and the course of future politics. All could affect sovereignty. Thus, H.R. 278 and the Settlement Act always will be part of a larger body of law and politics that affects sovereignty.

This analysis concludes that the sovereignty disclaimer in section 8 is insufficient as presently drafted. It says only that the "scope" of Native governmental powers is not affected by H.R. 278. However, the "scope" of Native governmental powers will be defined not by this bill, but will be defined by Native constitutions approved by past and future Secretaries of the Interior and by courts that interpret Native governmental powers in light of the law of Native sovereignty. Therefore, our suggested amendments include a more effective disclaimer (very similar to what the U.S. Senate drafted last year) and a savings clause for state authority with respect to natural resources.

H.R. 278 SHOULD BE AMENDED TO MAINTAIN STATE AUTHORITY OVER NATURAL RESOURCE MANAGEMENT

To address sovereignty, it is necessary to understand, first, what sovereignty is and the implications it has for state authority, and second, how H.R. 278 enhances opportunities for sovereignty.

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A. SOVEREIGNTY AND ITS IMPLICATIONS.

The dominant principle of Native sovereignty is that it exists at the sufferance of Congress and is subject to complete defeasance. U.S. v. Wheeler, 435 U.S. 313, 98 S.Ct. 1079, 1086 (1978). Thus, state powers can always be assured if Congress specifically so provides, or if a court finds they exist under court-created doctrines which allow application of state authority.

Early in history of federal-Native relations, the law of sovereignty was simple. Indians were separate nations, protected by the dominant federal government, and "the laws of a State [could] have no force" within reservation boundaries. Worcester v. State of Georgia, 31 U.S. (6 Pet) 515, 561 (1832). However, the Supreme Court long ago departed from that view. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 100 S.Ct. 2578, 2582 (1980).

Today, generalizations about Native sovereignty are treacherous. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 1270 (1973). Native sovereignty is a special relationship between a group of Indians and the federal government, by which the United States recognizes that the Indians retain some "attributes of sovereignty over both their members and their territory." See White Mountain Apache Tribe v. Bracker, *supra*, 100 S.Ct. at 2583; United States v. Mazurie, 419 U.S. 544, 95 S.Ct. 710, 717 (1975).

A major premise of any discussion of Federal Indian law is that there exists a tribe in the political sense, rather than in just an ethnological sense. The question the tribal existence, in the political sense, has been characterized as a "political question" which is not for the courts but for the Congress and the executive to determine. The Supreme Court long ago said, "it is the rule of this court to follow the executive and other political departments of the government, whose more special duty is to determine such affairs." United States v. Sandoval, 231 U.S. 28, 34 S.Ct. 1, 6 (1913). That is still the law today. See Joint Trib. Coun. of Passamaquoddy Tribe v. Morton, 528 F.2d 370, 377 (1st Cir. 1975). Therefore, "courts will accord substantial weight to federal [agency] recognition of a tribe." Mashpee Tribe v. New Seabury Corp., 592 F.2d 575, 582 (1st Cir. 1979). On the other hand, "a tribe must be something more than a private, voluntary organization." *Id.*, n. 3.

The Department of the Interior has adopted regulations for establishing that an American Indian group exists as an Indian Tribe. 25 C.F.R. Part 83. The most important criteria are: (1) continuous identity as an Indian entity from historical time to the present, (2) membership which resides in a specific area viewed as Indian, (3) continuous assertion of tribal political influence or other authority, (4) identifiable criteria for

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membership and an identifiable procedure for governing tribal affairs and members, and (5) membership composed of Native Americans who are not members of another tribe or a terminated tribe. 25 C.F.R. 83.7.

By listing Alaska Native villages as "Native entities", *supra*, rather than as tribes, the Department has left their tribal status ambiguous. To date, the Department has not formally recognized tribal status for Alaska Natives, although they would probably meet most of the criteria, with the possible exception that many villages may not have had a continuous assertion of tribal political influence or other authority. The Department's reluctance to formally recognize tribal status probably rests more on the policies and the substantive provisions of the Settlement Act than on any failure of Alaska Natives to meet the criteria. Therefore, it will be important to consider later in this analysis the effect of H.R. 278 on those policies and substantive provisions.

Sovereign tribes retain a semi-independent position in the law. They are not states, not nations, and are not possessed of the full attributes of sovereignty; instead, sovereign tribes are a separate people with power to regulate their internal and social relations which are not brought under the laws of the Union or the states in which they reside. White Mountain Apache Tribe v. Bracker, *supra*, 100 S.Ct. at 2583; McClanahan v. Arizona Tax Commission, 411 U.S. 164, 93 S.Ct. 1257, 1263 (1973).

This special relationship, if it exists or comes to exist, "insulates" the Indians and their lands in some respects with a "historic immunity from state and local control". New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 103 S.Ct. 2378, 2385 (1983); Mescalero Apache Tribe v. Jones, *supra*, 93 S.Ct. 1267, 1272 (1973).

For example, courts have held that Natives and their lands are immune, in at least some respects, from state civil regulatory authority related to natural resources, land use, fish and wildlife harvest, building and zoning codes, gambling, hazardous wastes and taxation. See New Mexico v. Mescalero Apache Tribe, *supra*, (immunity from state regulation of natural resources, fish and wildlife); State of Washington, Department of Ecology v. U.S. Environmental Protection Agency, 752 F.2d 1465 (9th Cir. 1985) (immunity from state hazardous waste regulations); Crow Tribe of Indians v. State of Montana, 650 F.2d 1104 (9th Cir. 1981) (immunity from severance tax on natural resources); Bryan v. Itasca County, Minnesota, *supra*, (immunity from personal property tax); Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981) (immunity from state regulation of bingo gambling); United States v. County of Humbolt, 615 F.2d 1260 (9th Cir. 1980) (immunity from zoning and building ordinances).

Since the Supreme Court long ago abandoned its simpler view of sovereignty that "the laws of a State have no force",

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there is today no rigid rule by which to resolve the question of whether a particular state law may be applied" to Indian land or tribal members. White Mountain Apache Tribe v. Bracker, *supra*, 100 S.Ct. at 2583. The lack of rigid rules requires a "particularized inquiry into the nature of state, federal and tribal interests at stake." *Id.* at 2584. Because sovereignty exists at the sufferance of Congress, this inquiry focuses most often on the intent of Congress as expressed or implied in treaties, federal statutes and the policies of federal agencies that implement those statutes.

Therefore, the intent of Congress in H.R. 278 will be particularly important to future sovereignty issues in Alaska. The cases show, *infra*, that if Congress is vague, ambiguous, or silent as to its intent about state authority, the courts are likely to find an implied preemption of state authority.

Under modern case law, state authority can be barred under either of two doctrines, known as the preemption doctrine and the impairment doctrine. Although both doctrines affect natural resource management, the preemption doctrine deserves the most attention because it relates to federal laws such as the Indian Reorganization Act, the Settlement Act, and the amendments to the Settlement Act proposed by H.R. 278.

1. The Preemption Doctrine

The broad power of Congress to regulate Indian affairs, under Art. I, sec. 8, cl. 3 of the U.S. Constitution gives rise to the preemption doctrine. White Mountain Apache Tribe v. Bracker, *supra*, 100 S.Ct. at 2583; Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico, 458 U.S. 832, 102 S.Ct. 3394, 3398 (1982). The goal of the preemption analysis is "to determine the Congressional plan" to see if it allows Native authority or preempts state authority. See Rice v. Rehner, 463 U.S. 713, 103 S.Ct. 3291, 3295 (1983). State law will be preempted if the preemption is express or can be found to be implied by the statute and agency action. Implied preemptions are commonly found by the courts, which again reinforces the need for careful drafting of a disclaimer and a savings clause if H.R. 278 is to be neutral on sovereignty.

For example, in New Mexico v. Mescalero Apache Tribe, *supra*, the Apache tribe operated under an Indian Reorganization Act constitution approved by the Secretary and which gave the tribe power to protect and preserve fish, wildlife and natural resources. The tribe adopted hunting and fishing regulations that authorized greater bag limits than state regulations. The tribe allowed non-Indians to hunt and fish under tribal regulations, and the state sued to enforce its regulations on non-Indians hunting and fishing on tribal lands. The Court held that the Indian Reorganization Act, the tribal constitution, and the tribal regulations implied a preemption of state authority. (The implied preemption was based in part on the fact that the State lacked a

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conservation interest because the wildlife was non-migratory, was stocked by the tribe and the federal government, and the greater harvest on reservation lands did not have off-reservation effects.)

Similarly, in Nance v. E.P.A., 645 F.2d 701 (9th Cir. 1981), the Environmental Protection Agency delegated to the Northern Cheyenne Tribe the setting of Clean Air Act standards for the tribe's reservation. EPA then approved the higher standards set by the tribe, even though the Clean Air Act delegated the primary authority for standards to the states and was silent with respect to tribal lands and tribal governments. See 42 U.S.C. 7407(a). Several resource development companies and the Crow Tribe petitioned for review of EPA's and Cheyenne's actions. The Ninth Circuit upheld EPA's delegation and approval and upheld Cheyenne's action. Nance, at 712-14. The court "declined to subordinate the tribe to state authority." State of Washington, Department of Ecology v. U.S.E.P.A., 752 F.2d 1465, 1472 (9th Cir. 1985) citing Nance, at 714.

Similarly, in State of Washington, Department of Ecology v. U.S.E.P.A., *supra*, EPA approved the State's program for hazardous wastes under the Resource Conservation and Recovery Act but declined the State's request to make its program applicable to Indian lands. The tribe in question had no program of its own, and EPA had not delegated to the tribe or approved any tribal action. The state sued to reverse EPA's denial. The court held that although the Resource Conservation and Recovery Act was silent about tribal programs, EPA was justified in preempting the state authority on tribal lands, based in large part on Nance. See, *id.* at 1471 - 72.

The point of these three cases is that preemptions are liberally found to be implied in agency actions pursuant to federal statutes that are vague, ambiguous or silent about preemption of state authority on Indian lands. Alaska Native village constitutions under the Indian Reorganization Act could easily be a source of such preemptions if H.R. 278 does not contain a savings clause for state authority and a clear disclaimer. The point of Mescalero Apache and Nance is that federal agency approval of a tribe's authority can result in an implied preemption, even where the federal statute upon which the agency relies does not expressly preempt state authority or does not expressly give the federal agency authority to delegate to, or approve actions of, a tribe. (The point is not whether these cases promote conservation, as in Nance, or promote resource use, as in Mescalero Apache.) The point of Washington Department of Ecology is that federal statutes can preempt state authority on Indian lands even where there is no express preemption, no delegation and no tribal action to be approved.

Courts find that preemptions are liberally implied for several reasons. First, Congress usually acts "upon the assumption that the States have no power to regulate the affairs

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of Indians on reservations." Rice v. Rehner, *supra*, 103 S.Ct. at 3298. Second, "[v]ague and ambiguous federal statutes must be measured against the 'backdrop' of tribal sovereignty, especially when the statute affects an area in which the tribe historically has exercised their sovereign authority or contemporary federal policy encourages tribal self-government." Washington Department of Ecology, *supra*, at 1470. Third, "traditional notions of tribal sovereignty, and the recognition and encouragement of this sovereignty in Congressional Acts promoting tribal independence and economic development, inform the preemption analysis." Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico, *supra*, 102 S.Ct. at 3398. "As a result ambiguities in federal law ... [are] construed generously, and federal preemption is not limited to those situations where Congress has explicitly announced its intention to pre-empt state authority." *Id.* at 3399.

2. The Impairment Doctrine

The semi-independent status of tribal Indians gives rise to the impairment doctrine. White Mountain Apache Tribe v. Bracker, *supra*, 100 S.Ct. at 2583. It bars state authority that impairs the "right of reservation Indians to make their own laws and be ruled by them." *Id.* citing Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 271 (1959). The focus of the impairment doctrine is on traditional Native governmental functions, rather than on Congressional intent. Crow Tribe of Indians v. State of Montana, *supra*, at 1110. The impairment doctrine has been held to bar state enforcement of state fish and game regulations applied to non-Indians on Indian lands, California v. Quechan Tribe, 424 F.Supp. 969 (S.D. Cal. 1977), vacated on other grounds, 595 F.2d 1153 (9th Cir. 1979) (tribe's immunity barred California's suit to enforce its regulations); bar county zoning ordinances, Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir. 1975); bar state laws of adoption, Fisher v. District Court, 425 U.S. 926, 96 S.Ct. 943 (1976); and bar state laws for commitment for mental care, White v. Califano, 581 F.2d 697 (8th Cir. 1978).

3. The Preemption Doctrine, Natural Resources & State Conservation Interests

The preemption doctrine is strongest when the conduct the state seeks to regulate concerns tribal members on tribal lands. Even when there is no express preemption, "state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." White Mountain Apache Tribe v. Bracker, *supra*, 100 S.Ct. at 2584. Therefore, state law generally does not apply to hunting, fishing, trapping, and other natural resource activities conducted by tribal members on tribal lands. In only one instance (the Puyallup fish cases, *infra*) has a state been able to regulate harvest of fish by tribal members on tribal lands to protect state conservation interests.

Where there is no express preemption, there appears to be developing with respect to state fish and game laws a prong of the preemption doctrine that seeks to balance Native interests in self-government against state conservation interests. Most of the time the balancing test comes out in favor of Indian control, regardless of whether the state seeks to regulate tribal or non-tribal use of tribal lands. However, this balancing approach needs to be recognized in order to fully understand the relationship of sovereignty and natural resources.

For example, in White Mountain Apache Tribe v. State of Arizona, 649 F.2d 1274, (9th Cir. 1981), which involved Arizona's and Washington's attempt to impose licensing requirements on non-Indians hunting and fishing on tribal lands, the court said the requirement for a "particularized inquiry" means "preemption questions are to be settled not so much by divining the actual intent of Congress, but rather by weighing in the judicial scales the present-day state, federal and tribal interests involved." Id at 1278. Therefore, "[t]he weight of the state conservation interest depends ... on the extent to which fish and game migrate across reservation boundaries", so as to create a state conservation interest. Id at 1283. However, the states were unable to demonstrate that their conservation interests were affected. The court held that the state licensing requirements and regulations applied to non-Indians, but not to Indians, hunting and fishing on tribal lands.

In New Mexico v. Mescalero Apache Tribe, supra, the Supreme Court examined the applicability of state hunting and fishing regulations to non-tribal members on tribal lands. The Court said, "A State's regulatory interest will be particularly substantial if the State can point to off-reservation effects that necessitate state intervention." Id at 2388. But, again the State was unable to point to off-reservation effects because the elk and trout at issue were resident to the tribal lands and had been stocked by the tribe and the federal government. The Court denied state authority to regulate either tribal members or non-tribal members.

In practice, mere migratory status alone does not automatically mean that the state can regulate. The state must demonstrate that its regulation of Indian hunting and fishing "is a reasonable and necessary conservation measure ... and that its application to the Indians is necessary in the interest of conservation." Antoine v. Washington, 420 U.S. 194, 95 S.Ct. 944, 952 (1975)(emphasis added). In Antoine, a few deer harvested by tribal members on tribal lands were at issue. They were harvested in violation of state regulations. The court held state law to be inapplicable because the State was unable to demonstrate that, with respect to tribal members on tribal lands, the state ban on out-of-season hunting of deer was necessary to the conservation of deer.

Anadromous fish present easier cases for the State to assert a reasonable and necessary conservation interest. In the Puyallup fishing cases in Washington, the State has been allowed to regulate commercial, in-river, Indian harvest of anadromous fish that migrate across reservation boundaries, in part because the state was able to demonstrate that unregulated harvest would threaten the resource, and in part because the underlying treaty provided for common use of fish between Indians and non-Indians. See Puyallup Tribe v. Department of Game of State of Washington, 433 U.S. 165, 97 S.Ct. 2616 (1977), Department of Game v. Puyallup Tribe, Inc., 414 U.S. 44, 94 S.Ct. 330 (1973), Puyallup Tribe v. Department of Game of Washington, et al., 391 U.S. 392, 88 S.Ct. 1725 (1968).

Much of the difficulty in showing that a state's regulation of Indian hunting and fishing is "reasonable and necessary" arises from: (1) a change that occurs in the evidentiary standard required to sustain a state regulation, and (2) a shift that occurs in the burden of proof.

Ordinarily, state agency regulations must be "reasonable and not arbitrary" to be sustained. Kelly v. Zamareillo, 486 P.2d 906, 911 (AK 1971). This "reasonable basis" approach is used in cases involving administrative expertise, such as natural resource regulations, and the courts defer to agency expertise. Id. at 916 - 917. Hence, the burden of proof is on the plaintiff to show a regulation is unreasonable.

However, when confronted with regulating sovereign tribes, "the burden must immediately shift to the state to show that the regulation is supported by evidence on grounds of being necessary for ... conservation". Department of Game v. Puyallup Tribe, Inc., 497 P.2d 171, 179 (Wash. 1972), reversed on other grounds, 94 S.Ct. 330 (1973).

The Puyallup anadromous fish cases appear easier for the State for several reasons. First, anadromous fish in fresh water exist in discrete populations that are confined to drainages. Since they were all absent before returning from the ocean, it is easy to prove if the fish migrate beyond Native lands. Second, Native and non-Native harvest was easily calculable in the Puyallup fish cases because the Native harvest was commercial and the non-Native harvest was recorded by a punch card system. Therefore, the State was able to demonstrate that unregulated commercial net fishing in the Puyallup River could easily harm state conservation interests. Third, in the Puyallup cases it was easy to estimate run size and harvest of discrete populations within a drainage. This yielded escapement estimates necessary to conserve the resource and assert the state interest.

In contrast, it is more difficult for the states to show the impact of unregulated Native harvest on Native lands when many mammalian or avian populations are at issue. Such populations often are not in discrete herds or flocks. They are not harvested

commercially so as to yield good harvest numbers. Individual animals, herds and flocks may not have discrete territories in the same sense that anadromous fish do in fresh water. The animals may change migration routes. And, it is more easily argued that state restriction of non-Indian harvest on non-tribal lands can ameliorate potentially higher harvest rates on Native land, so as to accommodate state conservation interests.

The point is that anadromous fish are confined and countable in specific locations, while mammals and birds, even though migratory, may be less susceptible to counting in discrete populations. Therefore, birds and mammals may be less susceptible to showings by the State that regulating Native harvest on Native land is necessary for conservation. That distinction may account for why the Puyallup fish cases stand alone as allowing state regulation of Indian harvest on Indian lands.

Because of concern for protection subsistence, the debate over sovereignty gets tied to protection of subsistence. However, for several reasons, the sovereignty issue is broader than just subsistence versus nonsubsistence interests.

First, with respect to subsistence use of migratory fish and wildlife, such as salmon, government needs to accommodate competing subsistence user groups that harvest the same wildlife population in different areas or at different times. For example, many subsistence villages harvest the same salmon stocks for subsistence as the fish migrate up the Yukon and Kuskokwim. Balancing those interests can be achieved more easily by the broad perspective of state authority than by individual village authorities.

Second, with respect to overall use of any wildlife stock for subsistence, sport, commercial, personal use and nonconsumptive purposes, the broader perspective of the state Board of Fisheries and Board of Game are more likely than local government to equitably balance those uses, so long as whatever is done is subject to the subsistence preference in 16 U.S.C. 3114 and AS 16.05.251 et seq.

Third, with respect to land use, timber practices, pollution and habitat protection, the broader perspective of state government is more likely than village government to develop resources in a manner that protects conservation values, since state agencies have the staff, budget and expertise to do so, while local villages do not.

Most natural resource cases involving activities on Indian lands concern regulation of the harvest of fish and game. There are few cases involving state habitat, pollution or land use regulations. However, three cases are instructive of the difficulty of applying such regulations to tribal lands.

Recall that in State of Washington, Department of Ecology v. U.S.E.P.A., *supra*, the State was unable to implement its hazardous waste program on tribal lands, despite the absence of a tribal program. In Nance v. E.P.A., *supra*, the tribal clean air standards preempted state authority.

Finally, if Native corporate lands became Indian Country, then P.L. 280 would apply, which under the Supreme Court's decision in Bryan v. Itasca County, *supra*, prevents application of state civil regulatory authority. Furthermore, P.L. 280 prohibits states from encumbering Indian Country. 28 U.S.C. 1360(b). In Snohomish County v. Seattle Disposal Company, 425 P.2d 22 (Wash. 1967), the court held that a zoning ordinance requiring a permit for a garbage dump on Indian land diminished the value of the land, was an encumbrance by the State and therefore unenforceable. State regulations of timber practices, habitat, land use would probably be similarly unenforceable if they diminished land value.

B. NOW H.R. 278 ENHANCES THE POSSIBILITIES OF SOVEREIGNTY

Although H.R. 278 does not create sovereignty, tribal status, or Indian Country, H.R. 278 enhances the likelihood that where they do not now exist, they could arise. Similarly, although H.R. 278 does not expand the scope of Native governmental powers, H.R. 278 enhances the likelihood that such powers may be expanded.

These events would occur most likely through the interplay of H.R. 278, the Department's ability to recognize tribes, and the Indian Reorganization Act, which allows Alaska Natives to organize, draft constitutions, have them approved by the Secretary of the Interior, and exercise powers under those constitutions. See, 25 U.S.C. 473a, 476. The enhanced opportunities for sovereignty would occur despite the technically correct but insufficient disclaimer in section 8 of H.R. 278 that H.R. 278, by itself, does not expand the scope of Native governmental powers.

H.R. 278 enhances opportunities for sovereignty by providing a jurisdictional land base over which to exercise sovereignty, and by undermining the policies and amending the substantive provisions of the Settlement Act that are distinct from, and contrary to, many aspects of sovereignty.

The current lack of tribal status and a jurisdictional land base are the major problems preventing sovereign power over natural resources in Alaska. From a pro-sovereignty perspective, it would be useful to weaken several policies of the Settlement Act and amend several of the substantive provisions of the Act.

The policies that underlie the Settlement Act are set forth in section 2 of the Act, 43 U.S.C. 1601. Section 2 provides, in part, that the settlement was to be accomplished:

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- (1) without establishing permanent racially defined institutions, rights, privileges or obligations,
- (2) without creating reservations, wardship and trusteeship,
- (3) without establishing special categories of property or tax privileges,
- (4) without establishing special relationships between the State and Federal governments with respect to Alaska Natives,
- (5) without being a jurisdictional act of Congress, and
- (6) without diminishing the authority of the State to protect the welfare of Alaska Natives.

Although the Settlement Act did not expressly prohibit tribal status or sovereignty, critics of the Settlement Act differ on the effect these policies and the substantive provisions of the Act had on any sovereign powers held by Alaska Natives. The American Indian Policy Review Commission concluded that the Settlement Act did not effect any sovereign powers and that all the Settlement Act did was extinguish aboriginal title and provide compensation for that extinguishment. See, Robert E. Price, Department of Law, State of Alaska, "Legal Status of the Alaska Natives, A Report to the Alaska Statehood Commission," July 30, 1982, pp. 65-69, *citing* American Indian Policy Review Commission, Final Report (1977), pp. 435-436.

However, the Native American Rights Fund disagreed sharply with the commission and said:

Although ANCSA [the Settlement Act] did not terminate Alaska Natives with respect to their eligibility for federal services based on their status as natives, it is wholly inaccurate to say that the Act did not alter, in any way, the legal nature or status of Alaska Native tribes. The Alaska Native Claims Settlement Act specifically:

1. expresses a policy against creating reservations, wardships, or racially defined institutions;
2. terminates all hunting and fishing rights;
3. unilaterally revokes all reservations except Metlakatla;

4. provides for state taxation of Native lands after 1991.

The Act in effect de-emphasizes the roll of Native Village governments by preventing their ownership or control of any substantial portion of the 40 million acre settlement.

Price, *supra*, at 69-70, citing American Indian Policy Review Commission, *supra*, Vol. 2, p. 679.

Furthermore, section 2 provides that Settlement Act lands were not to be considered reservations or trust lands. The sole exception was that the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in the Public Works and Economic Development Act of 1965, 42 U.S.C. 3121 *et seq.*, would include Settlement Act lands, and then only as long as they remained in Native corporate ownership. 43 U.S.C. 1601(g). Congress specifically stated that it intended that this very limited status of Settlement Act land as "reservations" was to be "strictly construed." Hs. Conf. Rep. 92-746, 92d Cong., 1st Sess., 40. Congress intended the Settlement Act to "put an end to racial and ethnic distinctions in land tenure" Sen. Rep. No. 92-405, 92d Cong., 1st Sess., 79.

Thus, at least with respect to sovereign powers over land and natural resources, it seems clear that Congress intended that Settlement Act lands were not to become tribal lands or a jurisdictional land base for the exercise of sovereign powers.

1. H.R. 278 provides a jurisdictional land base for assertions of sovereignty over natural resource matters.

In order to achieve sovereign powers over natural resources, the Native entity exercising those powers needs a jurisdictional land base and tribal status. To date, even where some sovereign powers remain in Alaska Native institutions, that jurisdictional land base has been lacking, with the exception of the Metlakatla Indian Reservation. It has been lacking because, despite the fact that many Alaska villages organized under the Indian Reorganization Act after 1936, Native land claims remained unsettled until the Alaska Native Claims Settlement Act of 1971.

Furthermore, since the Settlement Act, the jurisdictional land base has continued to be lacking for several reasons. First, the Act conveyed land to private profit-making Native corporations, instead of either conveying lands directly to tribal governments or councils, or reserving lands from the public domain for Native use and control. Second, the Act established a policy against new reservations, special governmental relationships, special categories of property, and racially defined institutions. Third, the intent was expressly stated as putting an end to racial and ethnic distinctions in land tenure.

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Fourth, the Act was not a jurisdictional act. And fifth, the Act was not to diminish state authority.

H.R. 278 provides the jurisdictional land base for Native governments. It does so by allowing transfer of corporate Settlement Act lands to "qualified transferee entities" established under section 7 of H.R. 278. Under section 7, qualified transferee entities are racially defined institutions that in all probability would be tribal councils or tribal governments representing the membership.

Thus, from a pro-sovereignty perspective, section 7 "solves" the problem of the lack of the jurisdiction land base over which Native governments could assert sovereign powers over natural resources. Such assertions would depend on whether the courts or the Secretary recognize such powers, either as inherent retained sovereignty or as authorized in past or future constitutions under the Indian Reorganization Act. Conversely, from the perspective of opponents of sovereignty, section 7 "creates" a problem by creating a jurisdictional land base.

It is important to realize that merely transferring land to Native governmental entities would not in itself create sovereign powers over natural resources. Those powers would have to be granted or found to exist by either Congress, the Secretary under the Indian Reorganization Act, or the courts. However, merging land ownership with tribal councils or Native governments would be the most important prerequisite to achieving sovereign powers over natural resources, and once that merger is achieved the question of sovereign powers over natural resources would be largely up to the courts and the Secretary, who under the Indian Reorganization Act can approve authority for Indians to regulate natural resources, lands, and fish and wildlife. See, New Mexico v. Mescalero Apache Tribe, *supra*, 103 S.Ct. at 2382.

2. H.R. 278 effects the policies and substantive provisions of the Settlement Act to enhance sovereignty.

(a) Special Governmental Relationships.

Sovereignty involves a special relationship between the United States, Natives, and states, which renders Natives and their lands immune from some state authority. New Mexico v. Mescalero Apache Tribe, *supra*; Mescalero Apache Tribe v. Jones, *supra*; see also Worcester v. Georgia, *supra*.

The policy of the Settlement Act was to avoid creating special relationships, such as tribal status, between the United States, Natives and the State. 43 U.S.C. 1601(b). Settlement Act lands were not reservation or trust lands. 43 U.S.C. 1601(g). The Act avoided creating reservations, wardship, and trusteeship. 43 U.S.C. 1601(b).

For the most part, the substantive provisions of the Act did not create special relationships, although it did create a few minor exceptions to state law. Therefore, state law applied to corporate formation, shareholder rights, and most aspects of inheritance. See, 43 U.S.C. 1606. State statutes and regulations concerning habitat, timber practices, land use, pollution, and fish and wildlife harvest for subsistence, sport, commercial and personal use purposes apply to corporate lands. See, eg, 16 U.S.C. 3115(d), AS 16.05 generally, AS 16.10 generally, AS 16.05.870, AS 16.05.251, AS 16.05.255, AS 16.10.010. Thus, the corporate model, which is the core of the Settlement Act, is contrary to special governmental relationships that preempt state authority over natural resources.

The exceptions in the Settlement Act to state law were "minor". Sen. Rept. 92-405, 92nd Cong., 1st Sess. 79. State law does not apply to some aspects of inheritance; see, 43 U.S.C. 1606(h),(p). Undeveloped land is immune from taxation until 1991, and Natives received personal tax immunity for receipt of stock in Settlement Act corporations. 43 U.S.C. 1620.

Therefore, the substantive provisions of the Settlement Act generally carry out the policy in Section 2 of avoiding special relationships between the federal government, the state government, Natives, and Native corporations and assets.

H.R. 278 does not create special governmental relationships. However, the disclaimer in Section 8 of H.R. 278 ignores the effect that merging land ownership with Native governments may have on state law and special relationships that exist or come to exist through the Indian Reorganization Act and the Secretary's ability to recognize tribal status. Thus, if a corporation transfers its assets to a traditional tribal council or to a tribal government organized under the Indian Reorganization Act, and if the Secretary approves tribal status, then whatever sovereignty the council or government has under federal Indian law, its constitution and the case law may apply to the exclusion of state law. Any expansion of sovereign powers will occur through either: (1) the approval of tribal status and the powers granted by the Secretary in a tribal constitution or found to exist by a court interpreting that constitution in light of federal Indian law, or (2) the powers a court finds exist under federal Indian law in the tribal council or government. The expansion will not occur because of the mere transfer itself, but will occur because H.R. 278 is silent about the Indian Reorganization Act, the courts, tribal status and Indian Country, and because Congressional silence can easily imply a preemption, *supra*. The result would be a special relationship over land tenure that is contrary to the intent of the Settlement Act.

(b) Private and Sovereign Immunities; Special
Categories of Property and Tax Privileges.

Private immunities are those possessed by individuals or private entities. Sovereign immunities are those possessed by governmental entities.

Sovereignty involves several sovereign immunities. Indian tribes possess common-law immunity from suit traditionally enjoyed by sovereign powers. Turner v. United States, 248 U.S. 354, 39 S.Ct. 109, 110 (1919); United States v. United States Fidelity & Guaranty Co., 309 U.S. 506, 60 S.Ct. 653, 656 (1940). This aspect of tribal sovereignty, like all others, is subject to the superior and plenary power of Congress. United States v. United States Fidelity & Guaranty Co., *supra*, 60 S.Ct. at 512. Furthermore, villages organized under the Indian Reorganization Act are immune from suit. Atkinson v. Haldane, 569 P.2d 151, 175 (AK, 1977). Business corporations organized by villages under the Indian Reorganization Act are immune from suit, unless they waive immunity in their articles of incorporation. See, Parker Drilling Company v. Metlakatla Indian Community, 451 F.Supp. 1127 (D.AK. 1978). Tribal lands are immune from taxation and state regulations encumbering the land. 28 U.S.C. 1360(b), Snohomish County v. Seattle Disposal Company, *supra*.

The Settlement Act afforded no such governmental immunities since it avoided creating Native governments or tribal status. Although sec. 21(d) of the Act, 43 U.S.C. 1620(d), affords a private tax immunity, for twenty years from conveyance, for undeveloped Native corporate land, the policies of the Act: (1) avoided establishing permanent racially defined governmental rights or privileges, (2) avoided adding to categories of property and institutions enjoying special tax privileges or special relationships between the United States Government and the State of Alaska, and (3) avoided being a jurisdictional act so as to create sovereign immunities.

H.R. 278 affects private immunities in several ways. Section 13 of H.R. 278 makes permanent the tax immunity for undeveloped lands. Section 13 also affords such land permanent immunity from adverse possession, creditor claims, judgments on creditor actions, and involuntary distribution or conveyance upon an involuntary dissolution of a Native corporation. These immunities are made retroactive to the date of conveyance. Although section 13 leaves these immunities as private immunities, the permanent immunity from taxation, adverse possession and the retroactive effect are characteristic of sovereign immunities in that any governmental property, regardless of the nature of the government, is immune from taxation and adverse possession. Thus, Section 13 is similar to governmental and tribal immunities.

If a transferee entity were a Native governmental entity, then those immunities that are private immunities under section 13 probably would become sovereign immunities of the

governmental entity. In addition, the entity probably would carry all the other sovereign immunities, such as immunity from suit, taxation, and regulatory encumbrances.

Thus, H.R. 278 undermines the policies and substantive provisions of the Settlement Act that avoided permanent private immunities and avoided all sovereign tribal immunities. H.R. 278 undermines the substantive provisions granting durationally limited, private, tax immunity, by making permanent the tax immunity for corporate undeveloped land and by added several other substantive immunities for that land. Although these immunities may be desirable to protect Native control and promote conservation, their close approximation of sovereign tribal immunities should not be ignored if H.R. 278 is to be neutral on state and Native governmental powers. They easily could be construed to bolster tribal sovereignty. This would be particularly true if these immunities and the land were held by a tribal council or government, as a transferee entity, which was immune from suit under either the common law sovereign immunities historically afforded Indian tribes or the governmental immunity that is afforded by the case law under the Indian Reorganization Act.

(c) Racially Defined Institutions and Privileges

Native sovereignty, tribal governments, tribal status and tribal membership are racially defined institutions and privileges.

The policy of the Settlement Act was to avoid racially defined institutions and privileges. 43 U.S.C. 1601. The Act did not create sovereign governments, tribal status or tribal membership. However, several of the substantive provisions obviously created limited racially defined institutions and privileges because of the very nature of the Act. Only Natives were enrolled, 43 U.S.C. 1604. Only Natives became initial stockholders. 43 U.S.C. 1606(g). Until December 18, 1991, only Native stockholders have voting rights in the event that stock is willed to a non-Native. 43 U.S.C. 1606(h)(2). Corporations may restrict voting rights to only Natives even after 1991. 43 U.S.C. 1606(h)(3). Only Natives have tax immunity on receipt of stock. 43 U.S.C. 1620(b). Thus, with respect to the policy against racially defined institutions and privileges, the substantive provisions of the Settlement Act at first appear to be somewhat of a mixed bag.

However, a distinction between the Settlement Act and sovereignty is that the racially defined institutions and privileges created under the Settlement Act are all private and are tied to private corporations. See, 43 U.S.C. 1604 (Natives enrolled as of 1971 for purposes of determining corporate land entitlements), 43 U.S.C. 1605 (financial compensation for settlement distributed through corporations), 43 U.S.C. 1606 (stock to Natives only, Native only voting rights, income

distributions to all Native and non-Native stockholders), 43 U.S.C. 1620(b) (Native only tax immunity for receipt of stock).

In contrast, the racially defined institutions and privileges characteristic of sovereignty are governmental, membership-based, Native institutions and privileges, such as tribal councils, tribal governments, tribal corporations, tribal status, tribal membership, tribal membership rights, and of course, sovereignty itself.

H.R. 278 for the most part leaves racially defined institutions and privileges tied to the private corporations, with one important exception, which is, again, the transferee entity provision in section 7. Transferee entities are Native membership institutions, rather than private shareholder institutions. They can only accept Natives or descendants of Natives as new members. Sec. 7, H.R. 278, proposed sec. 7b(c) of the Settlement Act. They can vote to exclude non-Native shareholders from membership. Sec. 7, H.R. 278, proposed sec. 7b(d) of Settlement Act. If such an exclusion occurred, it would force a buy-out of dissenting shareholders prior to conveyance of assets. See sec. 7, H.R. 278, proposed sec. 7b(g) of Settlement Act. The result would be that on the day prior to actual conveyance to a transferee entity, only Native shareholders would remain. See sec. 7, H.R. 278, proposed sec. 7b(c) of Settlement Act. H.R. 278 provides that the initial members of the transferee entity shall be those individuals who were shareholders on the day before the date of transfer. Sec. 7, H.R. 278, proposed sec. 7b(c).

The point is that the transferee entity provision is capable of converting temporary, private, individual and corporate institutions and privileges, that are mostly but not totally racially defined, into permanent, governmental, membership-based institutions and privileges that can be totally racially defined.

If such institutions also possessed the immunities afforded by Section 13 in H.R. 278, along with a tribal constitution under the Indian Reorganization Act and the governmental immunities afforded tribal governments established by such constitutions, then a court may find that sovereignty has been achieved, despite the disclaimer in Section 8 of H.R. 278, which says only that H.R. 278 does not affect the scope of Native governmental powers. Sovereign powers could be expanded because the disclaimer fails to address the scope of Native governmental powers or immunities under the Indian Reorganization Act or common law Native sovereignty, which are likely to be the sources of expanded sovereign powers and immunities in Alaska.

(d) Indian Country and Tribal and State Jurisdiction

If Settlement Act lands were to become Indian Country, then clearly state civil regulatory authority would not apply

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under Bryan v. Itasca County, supra. The focus will probably be on whether Settlement Act lands are dependent Indian communities.

In determining whether an area is a dependent Indian community so as to be Indian Country, courts consider three criteria: (1) the nature of the area, with the ultimate issue being whether the area was established for the use, occupancy and protection of dependent Indians, (2) the relationship of the inhabitants to Indian tribes, and (3) the relationship of the community with the federal government and the practice of government agencies toward the community. See United States v. Martine, 442 F.2d 1022, 1024 (10th Cir. 1971); United States v. Levesque, 681 F.2d 75, 77 (1st Cir. 1982).

The first criterion will be met if the land is held by the United States in trust for the Indians or if the land is held in fee by the tribe. See United States v. Levesque, supra, at 78, United States v. Martine, supra, at 1023 - 24. The transferee entity provision allows this criterion to be met. Furthermore, the Indian Reorganization Act allows the Secretary to accept land in trust for the benefit of Indians, 25 U.S.C. 465, which could be an alternative route to creating Indian Country.

The second criterion will be determined by the racial character of the community and whether a tribal council recognizes membership status for the Indians. United States v. Levesque, supra, at 78. Since transferee entities are racially defined membership institutions, there would be no problem meeting the second criterion.

The third criterion will be met if the Bureau of Indian Affairs or federal laws afford the Natives tribal status. Id. As discussed previously, the Department's regulations establish criteria for tribal status, 25 C.F.R. 83.7. Also, at least two statutes passed since the Settlement Act define "tribe" to include Alaska Natives for purposes of those statutes. See Indian Self-Determination and Assistance Act, 25 U.S.C. 450b(b); Indian Child Welfare Act, 25 U.S.C. 1903(8). It is possible that the third criterion for finding a dependent Indian community would be met.

Tribal jurisdiction is a fundamental aspect of sovereignty. Tribal jurisdiction includes both personal and subject matter jurisdiction. See White Mountain Apache Tribe v. Bracker, supra, 100 S.Ct at 2583 ("sovereignty over members and territory" and "right to make own laws and be ruled by them").

The Settlement Act provides that it is not a jurisdictional act. 43 U.S.C. 1601. Although the Settlement Act does not contain a conventional savings clause for state authority, the Act provides that it shall not be construed to "relieve, replace, or diminish any obligation ... of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of ... Alaska." Id. The provisions that avoid special relationships, racially defined institutions, and special

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privileges are also consistent with preserving state authority. Id. The substantive sections of the Act that led to conveying lands to private corporations, rather than to tribal councils or governments, clearly imply no grant of Native governmental jurisdiction over those lands, for such a grant would be contrary to 43 U.S.C. 1601. Furthermore, the Settlement Act has always been interpreted to permit state authority over lands conveyed to Native corporations, supra. And finally, the Settlement Act expressly required some actions, such as corporate matters, to occur under Alaska law, and except as expressly provided by the Act, the Settlement Act has not been construed to preempt state corporate law.

Construed as a whole, all of these elements of the Settlement Act amount to a savings clause for state authority. Therefore, the Act did not affect state jurisdiction except as expressly provided in a few minor exceptions.

H.R. 278 does not create any new tribal jurisdiction or Indian Country. However, the transferee entity provision in H.R. 278 undermines the Settlement Act by allowing racially defined institutions to receive Settlement Act lands but does not prevent the transferee entities from thereafter seeking jurisdictional powers over lands and natural resources under the Indian Reorganization Act or through the courts. Similarly, H.R. 278 does not prevent transferred lands from becoming Indian Country.

Therefore, H.R. 278 should be amended to preclude Indian Country and include a savings clause for both the Settlement Act and H.R. 278, at least with respect to natural resources.

(e) The Guideline on Construing Ambiguities in Indian Legislation in Favor of Indians, Sec. 2, H.R. 278.

It is well settled that ambiguities in Indian Legislation are construed in favor of the Natives. Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico, supra, 102 S.Ct. at 3399. Section 2 of H.R. 278 finds that the Settlement Act and H.R. 278 are Indian legislation. This could be important for two reasons.

First, the disclaimer in section 8 is ambiguous, vague and imperfect. It prevents only the provisions of H.R. 278 from affecting the scope of sovereign powers. It leaves open the question of whether the disclaimer prevents expansions sovereign powers under the Indian Reorganization Act after a transferee entity receives land. The ambiguities guideline would lead to the conclusion that the disclaimer only prevents expansions of power under H.R. 278 and does not prevent expansions of power under the Indian Reorganization Act.

Second, the guideline on construing ambiguities in Indian legislation could also affect arguments over whether Native

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corporate land, after transfer to a transferee entity, could become Indian Country or be held in trust by the Secretary. Although the Settlement Act, 43 U.S.C. 1601(g), provides that the terms "reservation", "trust" and "restricted Indian-owned land" would include Settlement Act land only for purposes of the Public Works and Economic Development Act, *supra*, and then only so long as the land was owned by Native corporations, it is not altogether clear that 43 U.S.C. 1601(g) prohibits the Secretary from accepting land in trust for Indians pursuant to the Indian Reorganization Act, 25 U.S.C. 465, which allows the Secretary to do so. To do so, the shareholders of a corporation could vote to impose restrictions on the alienability of corporate land and then vote to transfer the land to a racially defined, membership-based transferee entity, with the understanding that the entity would thereafter request the Secretary to accept legal title to the land and hold it in trust under the Indian Reorganization Act.

The question of whether the Secretary could use the Indian Reorganization Act to create new reservations in this manner, from corporate lands transferred to a tribal government and then offered to the Secretary, is a very real question. According to Price, *supra*, pp. 199-201, on September 1, 1979, the Venetie Indian Corporation and Neets'ai Corporation, which are the Settlement Act corporations for Venetie and Arctic Village, deeded their lands to the Native Village of Venetie Tribal Government. The tribal government thereafter requested the Secretary to take the lands and recreate the Venetie Indian Reservation, which was revoked by the Settlement Act, 43 U.S.C. 1618. The Secretary declined to do so, but it is not altogether clear that he was required to decline by 43 U.S.C. 1601(g), the revocation of reservations, and other policies and substantive provisions of the Settlement Act.

Therefore, the guideline on ambiguities in Indian legislation may tip the balance toward a court concluding that 43 U.S.C. 1601(g) and other policies and substantive provisions of the Settlement Act do not prevent the Secretary from exercising discretion under the Indian Reorganization Act, 25 U.S.C. 465, to accept transferred lands and hold them in trust. If that were to occur, then there would be a total reversal of the policies, substantive provisions and Congressional intent of the Settlement Act to put an end to racial and ethnic distinctions in land tenure.

Departmental regulations permit the Secretary to accept land if it is already owned by the tribe. 25 C.F.R. 151.3, see also 25 C.F.R. 151.10. Such acceptances are discretionary, invoke the sovereign immunity of the United States, and are therefore beyond state challenge. *State of Florida Department of Business Regulation v. U.S. Department of the Interior*, 768 F.2d 1248 (11th Cir. 1985).

Although the Settlement Act is codified as with the public land laws, the Act is clearly Indian legislation for many

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purposes. The Federal District Court for Alaska has said in dicta on two occasions that the Act should be construed favorably to the Natives. See Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664, 671 (D.AK. 1977), Wisenak, Inc. v. Andrus, 471 F.Supp. 1004, 1010 n. 14 (D.AK. 1979). From a pro-sovereignty perspective, it would be useful to have Congress state that the Settlement Act and H.R. 278 are Indian legislation because the guideline on ambiguities could be used more easily to refute:

(1) arguments that the Settlement Act and the disclaimer either prevent sovereignty or prevent the expansion of sovereign powers through the Indian Reorganization Act and court decisions,

(2) arguments that the revocation of reservations and the policy expressed in 43 U.S.C. 1601(g) effectively prohibit Settlement Act lands from being Indian Country,

(3) arguments, based on legislative history, that the Settlement Act put an end to racial and ethnic distinctions in land tenure, and

(4) arguments that the Settlement Act prevents tribal status.

Conversely, those who are worried about or opposed to sovereignty take objection to the finding in H.R. 278 that the Settlement Act and H.R. 278 are Indian legislation.

C. A NOTE ON LACEY ACT AMENDMENTS

The 1981 amendments to the Lacey Act, 16 U.S.C. 3371 et seq. (1976 ed. Supp. V), accord tribal hunting and fishing regulations the force of federal law and make it a federal offense to import, export, transport, sell, receive, acquire or purchase fish or wildlife taken or possessed in violation of any tribal regulation. 16 U.S.C. 3372(a)(1). It is also a crime to enter Indian Country for purposes of hunting, fishing and trapping without consent of the tribe. 18 U.S.C. 1165.

The Lacey Act amendments are pretty straightforward with respect to Indian reservations in the lower 48 states that were created from federal public domain by treaty, Congressional act or executive withdrawal of public lands and waters. But, the Lacey Act amendments will not work well in Alaska if Settlement Act lands become Indian Country. The Lacey Act amendments would not work well for two reasons. First, the State claims jurisdiction and title to the water column of all boatable and fishable waters. Ak. Const., art. 8, sections 3, 6, 14, AS 38.05.128, AS 38.05.965. Second, the State owns the submerged land beneath navigable waters under the Submerged Lands Act, 43 U.S.C. 1301 et seq. These state claims of ownership date from statehood and preceed passage of the Settlement Act. Thus,

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fishable, boatable, and navigable waters are ribbons of state ownership that traverse Native lands, and would traverse Indian Country if Settlement Act lands became Indian Country. Entering such waters and taking fish and game from them would create a legal puzzle if the uplands were Indian Country. Congress would be wise to not leave questions about Indian Country unanswered.

D. SUMMARY

Sections 2, 7, 8, and 13 in H.R. 278 need to be handled very carefully if the bill is to be neutral on sovereignty and state authority. Most importantly, the disclaimer in section 8 needs to be rewritten to disclaim sovereignty with respect to natural resources and to add a savings clause for state authority over natural resources.

The effects of H.R. 278 can be summarized as follows:

(1) JURISDICTIONAL LAND BASE -- The Settlement Act was contrary to Settlement Act lands being a jurisdictional land base, as is shown by: (a) policies against reservations, special categories of property and tax privileges, (b) policies against the Act being a jurisdictional act, (c) policies against diminishing state authority, (d) Congressional intent to put an end to racial distinctions in land tenure, (e) the conveyance of lands to private corporations, and (f) the revocation of reservations. These elements prevent the lands from being a jurisdictional land base over which to exercise sovereignty. However, the transferee entity provision in H.R. 278 allows merger of Native governments and the land base. Nothing in the disclaimer or other provisions of H.R. 278 effectively prevents the land from becoming a jurisdictional land base or the Secretary or the courts from granting or recognizing sovereign powers over natural resources under the Indian Reorganization Act or prior case law after a transfer of land occurs. H.R. 278 should therefore address the Indian Reorganization Act, the courts, and Indian Country, and the Lacey Act.

(2) SPECIAL GOVERNMENTAL RELATIONSHIPS -- The Settlement Act expressed a policy against special governmental relationships with Alaska Natives, revoked all but one reservation, and was not a jurisdictional act. The structure of, and subsequent interpretation of, the Act seem to preclude tribal status for most purposes and maintain state authority in most areas, particularly over natural resources and corporate matters, so as to avoid establishing special governmental relationships. H.R. 278 by itself does not create special governmental relationships, but where special relationships exist or come to exist, H.R. 278 does not prevent Secretary or the courts from expanding the scope of Native

governmental powers under the Indian Reorganization Act or prior case law so as to preempt state authority in areas where it was preserved by the Settlement Act, such as in natural resources. H.R. 278 does not prevent the courts from finding that Indian Country exists if Settlement Act lands are transferred to a transferee entity. Therefore, the transferee entity provision and the inadequacy of the disclaimer invite new and expanded special relationships. They should be amended to preserve state authority over natural resource, preclude Indian Country and address tribal status.

(3) PRIVATE AND SOVEREIGN IMMUNITIES -- The Settlement Act created no sovereign immunities. The policies of the Act avoided racially defined rights and privileges, and special categories of land or institutions enjoying special tax privileges or special relationships. It avoided affecting state or Native jurisdiction by not being a jurisdictional act. The private immunities it created were minor and were either individual immunities or corporate immunities with respect to land and taxation. H.R. 278 allows these private immunities to be converted into immunities held by traditional tribal councils or tribal governments. The immunities will then appear very similar to sovereign immunities. H.R. 278 should specifically preclude sovereign immunities with respect to natural resource matters.

(4) RACIALLY DEFINED INSTITUTIONS AND PRIVILEGES -- The Settlement Act expressed a policy contrary to racially defined institutions and privileges, such as sovereignty, tribal governments, tribal status or tribal membership. The only racially defined institutions and privileges the Act did create were all tied to corporate matters. H.R. 278 undermines the policy of the Act by creating transferee entities as racially defined, membership institutions, which are likely to be tribal councils. H.R. 278 should be amended to clarify that the racially defined transferee entities will not possess sovereign powers, at least with respect to natural resources.

(5) NATIVE AND STATE JURISDICTION -- The Settlement Act prevented racially defined institutions from exercising sovereign powers over land and natural resources. This occurred by virtue of the revocation of reservations, the transfer of lands to private corporations, the policy against the Act being jurisdictional, the protection of state authority over Natives, and the continuous interpretation of the Act as maintaining state authority over natural resources on Native lands. However, in H.R. 278, the provisions related to Indian legislation, transferee entities, and the disclaimer allow or do not prevent assertions of, secretarial approval of, or court

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recognition of, such powers after corporate lands are transferred to a Native governmental entity. Recognition of such powers could come either under the Indian Reorganization Act or by court interpretation. Therefore, the disclaimer H.R. 278 needs to be amended to preclude Indian Country and Native jurisdiction over natural resources.

(6) AMBIGUITIES AND INDIAN LEGISLATION -- Finding that the Settlement Act and H.R. 278 are Indian Legislation makes applicable the guideline that ambiguities in Indian legislation are construed in favor of the Natives. Such a finding would be useful in arguing that the Settlement Act and H.R. 278 do not foreclose expansion of the scope of Native governmental powers under the Indian Reorganization Act. Although the Settlement Act probably is Indian legislation for many purposes, the extent to which the Settlement Act and H.R. 278 are Indian legislation should be left to the courts.

(7) LACEY ACT AMENDMENTS -- The state claims of ownership of water and submerged lands within Settlement Act lands create a confusing situation over the applicability of the Lacey Act amendments if Settlement Act lands were to become Indian Country. Congress should avoid leaving such confusion unanswered.

E. RECOMMENDATIONS

Attached is a list of suggested amendments designed to render H.R. 278 truly neutral with respect to the issue of Native sovereignty.

SUGGESTED AMENDMENTS TO H.R. 278
AS PASSED BY THE HOUSE OF REPRESENTATIVES
100TH CONGRESS, FIRST SESSION

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April 28, 1987

SECTION 2: CONGRESSIONAL FINDINGS

Suggested Amendment:

In section 2, strike subsection (b) and strike subsection (c) and reletter the subsections accordingly.

Rationale:

Subsection (b) finds the corporate model adopted by ANCSA is inappropriate. This finding may be used in later legal or political arguments related to sovereignty. This finding would promote claims that sovereignty, Indian Country, tribal status and even creation of reservations under the Indian Reorganization Act would be more appropriate models. Therefore, this finding should be deleted if Congress seeks to be neutral about sovereignty.

Although it may be true that the corporate model is ill-adapted in many circumstances, this finding is unnecessary to the substantive provisions of H.R. 278 and should not be included if Congress wants to be neutral on sovereignty.

Subsection (c) criticizes the value and effectiveness of the settlement, which provided 44 million acres and nearly 1 billion dollars to Alaska Natives. This finding is neither relevant to or implemented by the substantive provisions of the bill. It should therefore be stricken.

This finding seems to imply that something further should be done to benefit Alaska Natives and settle their claims equitably. In that sense it bolsters all other arguable benefits, including sovereignty, transferee entities, special rights and privileges related to stock, governmental and private immunities, and special status under securities laws.

ANCSA settled Native claims in a scheme that was designed to promote finality and put an end to racial and ethnic distinctions in land tenure. ANCSA was not designed to be an ongoing process of implementation or an ongoing special relationship. The settlement should not take on the appearance of being an ongoing special relationship with ongoing implementation.

However, other portions of the findings, such as sec. 2(d)(A), suggest that this will be case.

Other statutes, such as the subsistence provisions of ANILCA, the Indian Self-Determination Act, and the Indian Child Welfare Act, have retained or established specific aspects of a special relationship between the federal government and Alaska Natives.

That particularized approach makes much more sense. It does not undermine the policies and substantive provisions of the Settlement Act nearly as much as do broad congressional findings, such as sec. 2(b), sec. 2(c), and 2(d)(A), infra, which repudiate the corporate model, repudiate the value of the settlement and support undefined opportunities to change the character of the settlement.

Suggested Amendment:

In section 2, subsection (d), amend paragraph (A) to read as follows:

"(A) provide the stockholders of each Native Corporation an opportunity to manage the benefits derived from the settlement in the manner which is consistent with the policies and provisions of the Alaska Native Claims Settlement Act and this Act, and which the stockholders determine is best suited to their particular circumstances, except that this Act and such opportunity shall not be construed to alter the policies or the provisions of the Alaska Native Claims Settlement Act or preempt state authority over natural resources;"

Rationale:

By virtue of the preambulatory language of subsection (d), this suggested amendment retains the Congressional finding that Alaska Natives ought to be afforded maximum participation in decisions affecting their rights and property by providing them an opportunity to manage Settlement Act benefits in a manner best suited to their circumstances. However, this suggested amendment requires that such management be consistent with the policies or substantive provisions of the Settlement Act except as expressly amended by H.R. 278.

The suggested language is more tightly drafted than is sec. 2(d)(A) in the H.R. 278 as passed by the House. The original phrase in paragraph (A), "implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including but not limited to ...", is too loosely drafted. It facilitates future legal and political arguments that there are not restraint on the degree to which Alaska Natives can utilize: (1) the authority of the Secretary to approve constitutions under the Indian Reorganization Act in order to create special relationships and racial distinctions in land tenure, (2) the authority of the Secretary to accept lands in trust to create Indian Country which would defeat state civil regulatory authority, and (3) the authority of the Secretary to grant tribal status. The original language therefore is not neutral but instead undercuts the policies and substantive provisions of the Settlement Act that are contrary to such claims. With sovereignty being an issue, and neutrality being at least the goal of some people, such loose language in paragraph (A) is unwise.

The suggested language is more neutral because it focuses on the opportunities H.R. 278 creates. However, the suggested language is not an open-ended policy statement, as is paragraph (A) as introduced.

The suggested amendment deletes reference to Natives born after 1971 from the Congressional findings. However, these suggested amendments do not delete the substantive provisions of H.R. 278 that allow such Natives to receive shares from the respective corporations. The recommended deletion of the finding with respect to "after-borns" does not affect the substantive provisions, because findings are not operational law.

Whether Natives born after 1971 should receive shares is more appropriately a corporate question, rather than a Congressional question. Involving Congress in that question promotes the appearance that Congress approves membership-based institutions that are racially defined. This undermines the policies of the Settlement Act that were contrary to such appearances and institutions. The matter of after-borns should be left to corporations and their shareholders, rather than Congress. Existing corporate law allows Native corporations to amend their articles of incorporation and by-laws to issue shares to such persons. Including the matter of after-borns in the findings raises problems while doing nothing substantively. Therefore, the matter should be deleted from the findings, although the substantive provisions could be left in H.R. 278.

The suggested amendment also deletes the portion of paragraph (A) that says that Congress finds that the corporate model may be inappropriate for holding lands. This finding relates to the provisions of H.R. 278 dealing with qualified transferee entities. Because these entities will likely be tribal councils, this finding raises the issue of sovereignty. Leaving this Congressional finding in the bill allows it to become an underpinning for legal and political arguments that sovereignty over natural resources should be permitted and that special relationships survived ANCSA, whereas the policies and substantive provisions of ANCSA clearly imply otherwise.

Suggested Amendment:

Strike the existing subsection (e) in section 2, and replace it with the following subsection, which is relettered because of previous suggested amendments:

"(c) that the civil regulatory authority of the State of Alaska is vital to the conservation, utilization and development of natural resources and needs to be maintained with respect to Native lands and the resources thereon."

Rationale:

The original subsection (e) finds that ANCSA and these amendments are Indian legislation. Finding that ANCSA and these amendments are Indian legislation opens questions of statutory construction of ANCSA and these amendments to the judicial guideline that ambiguities in Indian legislation are construed in favor of Indians. This is particularly important with respect to matters of sovereignty, such as the preemption doctrine, under which ambiguities are resolved in favor of preemption.

The extent to which the Settlement Act is Indian legislation is important for purposes of how ambiguities are treated in matters of statutory construction. ANCSA is a complex statute dealing with public land law, Native claims and aboriginal rights, state selections under the Alaska Statehood Act, conservation statutes governing national wildlife refuges and national parks, national defense withdrawals, the National Petroleum Reserve, tax law and state corporate law. Therefore, it is best to let the courts decide on a case-by-case basis the extent to which ANCSA and these amendments are Indian legislation and the extent to which the ambiguities guideline applies. For Congress to make a wholesale determination that the Settlement Act and these amendments are all Indian legislation preempts what ought to be role of the courts, and doing so oversimplifies the complex nature of the Settlement Act.

The ambiguities guideline also is part of the ongoing special relationship between Indians and the federal government. It's foundation is in the trust responsibility -- that Indian legislation is enacted for the benefit of Indians. The Settlement Act clearly sought to benefit Alaska Natives. Whether it did or not is a different question. But, more importantly, the Settlement Act, in 43 U.S.C. 1602, sought to avoid adding to the categories of legislation establishing special relationships, such as the trust responsibility.

Strengthening reliance on the "ambiguities guideline" is particularly risky in light of the potential for future arguments over sovereignty. Doing so facilitates arguments that the Settlement Act did not put an end to racial and ethnic distinctions in land tenure, that the revocation of reservations

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did not prevent recreating them, and that because sovereign powers over land and natural resources were not expressly prohibited by the Settlement Act, they can be reasserted by Natives under constitutions approved by the Secretary or can be found to exist by the courts.

The suggested alternative language is consistent with a savings clause, infra, for state authority, at least with respect to natural resources.

SECTION 3: NEW DEFINITIONS

Cautionary Comment:

Section 3, subsection (a), amends the Settlement Act to include "group" in the Settlement Act definition of "person". This needs further analysis.

The purpose of this amendment needs to be stated by the proponents of H.R. 278 as introduced.

The Indian Reorganization Act of 1934, as amended in 1936, refers to Alaska Natives as "groups". 25 U.S.C. 473a. That Act may be a vehicle for sovereignty in that it allows Native groups to organize, draft constitutions, submit them for approval by the Secretary of the Interior, and exercise powers under those constitutions. Court decisions under ANCSA refer to Alaska Natives as "groups" rather than "tribes". See, Central Council Tlingit and Haida Indians of Alaska v. Chugach Native Ass'n, 502 F.2d 1323 (9th Cir. 1974). Therefore, the definition may have a bearing on sovereignty issues arising under the Indian Reorganization Act and case law. It deserves further research.

Section 3, subsection (b) amends section 3 of ANCSA so as to define "descendant of a Native" as a lineal descendant of a Native. "Native" was defined in Section 3 of ANCSA as an individual of at least one quarter Native blood.

Descendants of Natives, who acquire Native common stock by inheritance, do not have voting rights under sec. 5, H.R. 278, proposed sec. 7(h)(5), unless allowed by affirmative vote of the Native shareholders. Thus, shareholder voting can become a racially defined privilege under H.R. 278. As intermarriages occur, the voting power may consolidate in fewer and fewer Natives, as opposed to descendants of Natives. Stock ownership could dilute, but voting rights could become concentrated.

These provisions related to descendants of Natives and voting may be useful in achieving the goal of maintaining Native control. If these provisions are retained as drafted, and perhaps they should be retained, Congress should retain them only if they are necessary to override state equal protection law under the Alaska Constitution or state corporate law. If they are not necessary for those purposes, then nothing in Alaska law prevents Native corporations from issuing voting and nonvoting stock on the basis of racial considerations. Therefore, Congress should be careful about creating racially defined privileges, since they relate to sovereignty and undermine the policies and substantive provisions of the Settlement Act.

I have no amendments to these definitions to suggest. I only hope that this comment on this definition shows the interplay between this definition, shareholder voting, inheritance provisions in this bill, and racially defined privileges. That

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interplay reinforces concern that H.R. 278 must be very careful in dealing with such matters. Whether the equal protection provisions of the Alaska Constitution, or Alaska corporate law, prevent Native corporations from creating such racially defined privileges, and therefore render these provisions of H.R. 278 necessary, needs to be researched.

SECTION 4: NEW STOCK ISSUANCE

Cautionary Comment:

I have no amendment to suggest because issues related to Native corporate stock generally do not concern the Sierra Club. However, I have a cautionary comment.

In Section 4, H.R. 278, proposed sec. 7(g)(2), there is no assurance that corporations which issue shares to after-borns, Natives over 65, and Natives who failed to enroll will treat equally all of the individuals in each of these classes who are similarly situated.

Therefore, this section seems to raise an equal protection issue among Natives. It allows some Natives to be treated unequally in comparison to other Natives similarly situated.

SECTIONS 4 AND 5: THE INTERPLAY BETWEEN NEW STOCK
ISSUANCE AND NATIVE COMMON STOCK RESTRICTIONS
DEFEATS WHAT THIS BILL SEEKS TO ACHIEVE

Critical Comment:

Sections 4 and 5, concerning new stock issuance and restrictions on Native Common Stock, initially did not appear to be of concern to the Sierra Club. However, these sections may result in consolidation of control in fewer and fewer Natives and thereby create further dissatisfaction with the Settlement Act and renewed demands for changes in the nature of the settlement. Furthermore, if sovereignty over natural resource matters should arise, then it is useful to examine the interaction of these sections.

Here is how the interaction works. Section 4 allows new stock issuances in two ways. New Native common stock may be issued to various classes of Natives, and additional shares of stock (presumably not Native common stock) may be issued and divided into various classes of stock with various rights, limitations and preferences. Issuance of these additional shares is not restricted to Natives. There is no assurance that these additional shares will have voting rights, and perhaps there should be no such assurance in light of the desire to retain Native control.

Section 5 addresses the rights of Native Common Stock. Native Common Stock shall have the right to be voted so long as it is held by a Native. Decendants of Natives and non-Natives are not assured of having voting rights, unless provided by the corporation. Native common stock is subject to numerous restraints on alienation, under sec. 5, H.R. 278, proposed sec. 7(h)(1)(B), unless the restraints are removed by shareholder vote under proposed sec. 7(h)(2).

Native shareholders will be able to control the vote on termination of restraints on alienation if they wish, because voting rights can be limited to Native common stock only, and then only to Native common stock held by Natives. Holders of nonvoting stock, whether Natives, decendants of Natives, or non-Natives, may become one group of dissident shareholders.

As a practical matter it is highly unlikely that many corporations will vote to allow alienation of stock. The proponents of this bill have frequently said that it is difficult for many Native shareholders to understand and run corporate procedures. This is probably true. That leads to the conclusion that it may be highly difficult to meet the requirements of H.R. 278 for petitions to get a vote on alienation before the shareholders (one third of shareholders must petition), for quorums (51 percent), and for majority votes for alienation. See, Sec. 5, H.R. 278, proposed sec. 7(h)(6)(D),(E). Furthermore,

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subparagraph (E) allows the boards of directors to raise the levels for quorums and required majorities.

While the Sierra Club believes that the alienation of stock should be decided by Natives, it should be obvious that the difficulties confronting shareholders who wish to sell their stock will frustrate them. They may become dissident shareholders, and therefore it is necessary to look at what they are likely to do under this bill.

Under this bill, if a dissenting shareholder demands to be bought out and the corporation agrees, the corporation sets the price, which is, according to the bill, conclusively fair. In setting the price, the corporation is authorized by H.R. 278 to disregard the value of any undeveloped land, which is the chief asset of many corporations. Thus, the price may drastically reduce the value of stock to be bought out when the corporation is land rich and cash poor, as most village corporations are.

The result is that control of the corporation increasingly can shift to fewer and fewer voting individuals, as the poorer, financially-strapped, rural subsistence Natives sell for little money their shares in corporations that have done them little good, and that they little understand or appreciate.

This risk of consolidated control, even though it exists under the current provisions of the Settlement Act, has serious social, political and legal implications.

From a social and political perspective, Natives who sold at low buy-out prices may come to view or continue to view the Settlement Act, as amended by H.R. 278, as an unsatisfactory settlement that was only made worse by consolidated control and unjust buy-out provisions. That view will lead only to requests for further amendments or changes in the nature of the settlement. It would be truly unfortunate if the Settlement Act came to be widely viewed, as it seems to be to some extent today, as a method by which the rich got richer and the poor got poorer.

It is difficult to determine what extent Native shareholders will sell under forced buy-outs. However, it might be useful to consider: (1) Departmental findings about willingness to sell, and (2) by way of analogy, the degree to which Natives who received limited entry commercial fishing permits, following Alaska's adoption of limited entry, have subsequently sold their permits. According to the Department, about 50 percent of Native shareholders may sell their stock. See, U.S.D.O.I., Draft ANCSA 1985 Study, June 29, 1984, pp. IV-32 to 37. The willingness to sell increases for younger age brackets. Id. The willingness to sell is highest for those with little to no knowledge of the Settlement Act. Id.

I have no information with respect to the degree to which Natives have sold limited entry commercial fishing permits,

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but such information should be available from the state Commercial Fisheries Entry Commission. I have the impression that those who have sold are not always pleased with having done so in that they may not have understood how valuable the permits have become. Limited entry has been criticized as depriving Natives of commercial fishing, and as I recall the press has reported that the village of Unakleet has asserted authority to issue its own commercial fishing licenses so as to preempt state limited entry requirements.

If consolidated control occurred as described, then it is useful to think of the social, political and legal implications if sovereignty over natural resources should arise. Section 7, dealing with transferee entities, requires only that membership in the transferee entities be provided for shareholders of Native Common Stock as of the day before the transfer. Membership for other Natives, including afterborns and former shareholders, is discretionary. If a transfer occurred after consolidation of shares into the hands of a few Natives, then they could subsequently transfer, and have the benefits of sovereignty and tribal status, while former Native shareholders and afterborns might not have those benefits. The situation would be a that of a recognized tribe, possessed of benefits, while being within an unrecognized tribe dispossessed of benefits.

Sovereignty and tribal status, if they occur, should be available to members of tribal groups, rather than the last of the shareholders. It would be highly unconscionable to apply state regulatory authority to some Natives in a village but not others. This is of particular concern in natural resource matters, since a "tribe within a tribe" would control the land and resources.

Initially, that reduced number of shareholders may be Native, but there is no guarantee that subsequently issued additional shares will not have voting rights, or that the remaining Native shareholders of Native common stock will not at a subsequent time vote to allow alienation of Native common stock. Therefore, after consolidation, the corporations may become controlled by non-Natives, who overtime will reap the benefits of the corporations and make decisions on whether or not to retain, sell, or develop the resources owned by the corporations.

It is equally possible that if a predaceous majority of the board of directors wanted to bleed the financial assets of the corporation, they could do so by setting a high-buy out price for an alienation vote that was going to fail. The consequences of this possibility are particularly insidious if the voting shares have been reduced over time by previous buy-outs for next to nothing. In such a situation the directors are more likely to hold or control, through family relationships or other ties, most of the voting shares, even though bought-out shares have been retired.

If such a predaceous majority came to exist, it could also dissolve the corporation and divide its lands and others assets among the remaining few shareholders.

Nothing in H.R. 278 prevents such outcomes.

In addition to these risks of consolidated control, non-Native control, and bleeding and loss of the assets of the corporation, one must look at this potentially bleak future in light of the immunities. This bill runs the risk of granting all the immunities in section 13 to Native corporations controlled by non-Natives.

Thus, this bill invites a future of: (1) dissenting shareholders being bought out for next to nothing, (2) increasing consolidation of control in fewer shareholders, (3) potentially non-Native control if subsequent stock issues of other than Native common stock are given voting rights, (4) bleeding of the corporate financial assets into the hands of a few, (5) loss of lands, and (6) unprecedented immunities for corporations that look little like the Native corporations of today.

I won't discuss sovereignty for such entities, since the implications should be obvious.

The Sierra Club has long been sympathetic to Native people and many Native concerns. The risks described above are not the best outcome for many Alaska Natives. By not preventing these outcomes, the bill is too permissive of predaceous, get rich schemes by which many Alaska Natives will suffer. It leads us to believe that we may be looking at renewed amendments to the Settlement Act in the future, and in a sense, new settlements for a long time to come.

Because of these problems, sections 4 and 5 need substantial reworking.

SECTION 7: QUALIFIED TRANSFEREE ENTITIES

Suggested Amendment:

Delete section 7, or if it is retained then the sovereignty disclaimer in section 8 should contain a savings clause and be strengthened to prohibit sovereign powers with respect to at least natural resources.

Rationale:

Section 7 allows Native Corporations to transfer their land and other assets to "qualified transferee entities". In all likelihood, these would be tribal councils.

Section 7 provides the jurisdictional land base for sovereign powers over natural resources, although Section 7 and a transfer under it, do not in themselves create sovereign powers. However, merger of the land base with a tribal council or tribal government is of great concern because it invites assertions of sovereign powers over natural resources through tribal constitutions approved by the Secretary, and through the courts.

Therefore, Section 7 is not neutral with respect to sovereignty, and it undermines the Congressional intent that the Settlement Act was to put an end to racial and ethnic distinctions in land tenure.

Section 7, also allows transferee entities to be membership-based, racially defined institutions. Only Natives and descendants of Natives may be new members, and transferee entities can vote to limit membership to Natives and thereby force a buy-out of non-Natives prior to transfer. Thus, the members of the transferee entity look much more like tribes capable of achieving tribal status under existing regulations.

Section 7 also fails to take care of the interests of shareholders of Native common stock who vote against transfer. Section 7 contains no assurance that they can demand that they be bought out because H.R. 278 allows the voting shareholders to decline to buy them out. Therefore, if the shareholders in the corporation vote against a buy-out, and if the members of the transferee entity vote to exclude non-Natives under proposed sec. 7b(d)(1)(A), then the non-Native shareholders will have their stock devalued to the extent of the transfer. If all corporate assets were transferred, then the devaluation would be total.

That scenario raises an interesting constitutional question of whether H.R. 278 authorizes a taking of property without just compensation so as to violate the taking clause of the 5th Amendment to the U.S. Constitution. Congress should be very careful on this point.

Section 7 also fails to address the interest of shareholders who hold nonvoting shares, which may be either non-Natives or descendants of Natives who hold Native common stock, or shareholders who hold "additional shares" issued under section 4 that are not Native common stock. They may have no voting rights and no buy-out opportunities. Thus, a transfer to a qualified transferee entity may leave them holding valueless shares.

Ordinarily section 7 would spawn litigation by dissenting shareholders who hold votable Native common stock, nonvotable Native common stock and additional stock. However, section 13 allows most of the corporate assets, i.e. the undeveloped lands, to be immune from such litigation. Furthermore, if all the assets of the corporations have been transferred to a sovereign entity that is immune from suit, at least by non-Natives, then there will be no corporate assets that can be reached by litigation. Thus, for dissenting shareholders there is little recourse available in the courts.

Finally, it is difficult to understand the justification for section 7 if it is not related to sovereignty. The Alaska Federation of Natives says that transferee entities are necessary because many Natives cannot work within the corporate model. This may be true, but there appears to be nothing that prevents such transfers under the common law of real property in Alaska, and the village corporations for Venetie and Arctic Village have done so. Therefore, section 7 seems unnecessary.

It is hard to understand why Natives will be able to work any better within the transferee entity model unless it implies sovereignty. Native corporations and Native tribal governments are both controlled by Natives. The Alaska Federation of Natives frequently says that the profit-making model is inappropriate, and this also may be true. However, a careful reading of the Settlement Act shows that only regional corporations, not village or Native group corporations, were required to organize as profit corporations. If Native shareholders of village corporations do not want their corporations to be organized as profit-making corporations, then they need only amend their articles of incorporation to so provide.

Therefore, we are left with the conclusion that the main purpose of section 7 is to merge the land base with tribal councils and thereby create a jurisdictional land base over which to exercise sovereign powers over natural resources.

SECTION 8: DISCLAIMER OF TRIBAL GOVERNMENT

The disclaimer in Section 8 has problems that are discussed at length in the accompanying legal analysis and comments upon H.R. 278. Basically, the structural problem with the disclaimer is that it disclaims only the provisions of H.R. 278 from affecting the "scope" of Native governmental powers. This does not prevent expansion of sovereign powers under the Indian Reorganization Act or through the courts.

In addition to this structural problem, the disclaimer has a conceptual problem. Disclaimers are inherently negative. They speak to what is prohibited, but they are silent and ambiguous with respect to what they ignore -- i.e. state authority.

Section 8 prohibits construing this act as affecting the scope of Native governmental powers. It is silent with respect: (1) the Secretary's powers under the Indian Reorganization to approve constitutions, accept lands in trust, and create reservations, (2) the power of the courts to find sovereign powers under common law principles of sovereignty, case law, and other statutes, (3) the power of the Secretary to afford tribal status under existing regulations, and (4) the power of the courts to determine questions of Indian country. Because the disclaimer is silent with respect to these matters, it is unclear whether it prohibits them even though they could expand the scope of Native governmental powers.

Negative approaches inherently have such problems, and the problem in this case is particularly of concern because the guideline on ambiguities might lead a court to conclude that what is not expressly prohibited is allowed.

A positive approach would be to use a savings clause in addition to a disclaimer. The following suggested amendment includes a savings clause in (a) for state authority over natural resources and disclaimers in (b) and (c) which are modeled after the disclaimers in the 1991 amendments drafted by the Senate last year. This approach preserves the status quo with respect to state and native governmental authority. Since the following suggested amendment is modeled after the disclaimer drafted in the Senate last year, our recommended changes are underlined.

Suggested Amendment:

Strike all of Section 8 and amend it to read:

"SAVINGS CLAUSES AND DISCLAIMERS

Sec. 8. (a) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets to a transferee entity under section 7 of this Act), or

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change in the status of Alaska Natives or Native land (including a change in ownership) effected either under this Act, or by the Secretary under federal Indian law, or by the courts in applying such law, shall diminish or preempt the authority of the State of Alaska to regulate and manage the conservation, utilization and development of natural resources, including but not limited to the authority of the State to regulate, protect and manage the use of land and water, harvest of fish and wildlife, fish and wildlife habitat, and pollution.

(b) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets to a transferee entity under section 7 of this Act), or change in the status of Alaska Natives or Native land (including a change in ownership) effected under this Act shall be construed to--

(1) enlarge or diminish or in any way affect the scope of the governmental authority, if any, of any Native organization, including any federally-recognized tribe, traditional Native council, Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended, or qualified transferee entity over lands (including management, or regulation of the taking, of fish and wildlife) or over persons in Alaska;

(2) grant or deny any governmental authority to such Native organization over lands (including management, or regulation of the taking, of fish and wildlife) or over persons in Alaska;

(3) create or validate or invalidate any assertion of such Native organization of any form of governmental authority over lands (including management, or the regulation of the taking, of fish and wildlife) or over persons in Alaska;

(4) validate or invalidate or in any way affect any assertion of tribal status or that Indian country, as defined in 18 U.S.C. 1151, exists or does not exist in Alaska;

(c) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets to a qualified transferee entity under section 7 of this Act), or change in the status of land (including a change in ownership) effected under this Act may be taken into account by the Secretary or any court in authorizing or determining--

(1) the existence of any Native governmental authority described in subsection (a),

(2) the existence of Indian country within the boundaries of the State of Alaska,

(3) any issue related to the existence of any Native governmental authority described in subsection (a) or any Indian country within the boundaries of the State of Alaska, or

(4) the intent of Congress with regard to any of the matters described in paragraphs (1), (2), or (3)."

SECTION 13: IMMUNITIES FOR NATIVE LAND

Section 13 deals with immunities for undeveloped land and therefore raises the Land Bank issue. As discussed in the accompanying legal analysis and comments on H.R. 278, the Land Bank and these immunities can be addressed in two ways.

The first is to amend section 907 of ANILCA, which creates the Land Bank, to include the additional immunities created by Section 13 of H.R. 278.

The second is to draft an alternative Section 13 which automatically would require that if lands were left undeveloped and undisposed then they would receive protection from loss of Native ownership through adverse possession, judgment upon creditor claims, and forced sale or distribution upon involuntary dissolution of the corporation. This second approach would allow Native corporations and federal and state agencies free to negotiate durational land bank agreements, applicable to specific tracts of undeveloped and undisposed land, that could address tax immunity, fire protection, trespass control, resource planning, compatible management, agency access, and public access.

Suggested Amendment, Alternative #1:

Amend section 13 to read as follows:

"AMENDMENT TO ALASKA LAND BANK

Sec. 13. (a) Section 907(b)(2) of the Alaska National Interest Lands Conservation Act is amended to read as follows:

(2) Lands subject to the agreement shall be identified by a map and land description, agreed upon by the parties, and shall be managed in a manner compatible with the management plan, if any, for the adjoining Federal or State lands, and with the requirements of this subsection. If the lands subject to the agreement adjoin lands under different ownerships or management plans, then the lands subject to the agreement shall be managed compatibly with the most protective plan or management requirements of any land that adjoins. If the lands subject to the agreement do not adjoin either Federal or State lands, they shall be managed in a manner compatible with the management plan, if any, of Federal or State lands which would be directly affected by the use of such private lands. If no such plan has been adopted, or if the use of such private lands would not directly affect either Federal or State lands,

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the owner shall manage such lands in accordance with the provisions of paragraph (1) of this subsection. Except as provided in (3) of this subsection, nothing in this section or the management plan of a Federal or State agency shall be construed to require a private landowner to grant public access on or across his lands.

(b) Section 907(c)(2) of the Alaska National Interest Lands Conservation Act is amended to read as follows:

(2) As to Native Corporations and all other persons or groups that have received or will receive lands or interests in lands therein pursuant to the Alaska Native Claims Settlement Act or sections 901 and 902 of this title, the following immunities are hereby granted; provided that none of the following immunities shall be construed to grant, approve, or affect claims of tribal status, tribal powers, or Native sovereignty --

(A) adverse possession;
(B) real property taxes and assessments by the United States, the State, or any political subdivision of the State: Provided that such immunity shall cease if the lands involved are leased or developed, as such terms are used in section 21(d) of the Alaska Native Claims Settlement Act;

(C) judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native Group or any officer, director, or stockholder of any such Corporation or Group;

(D) judgment resulting from any claim based upon or arising under title 11 of the United States Code relating to bankruptcy (or any successor statute), other insolvency or moratorium laws, or other laws affecting creditor's rights generally; and

(E) involuntary distribution or conveyance related to the involuntary dissolution of the Native Corporation.

On or before January 31 of each year beginning the fourth year after the date of enactment of this Act, the Secretary shall publish in the Federal Register and in at least three newspapers of general circulation in the State the percentage of conveyed land entitlement which each Native Corporation or Group has elected to include in the Alaska Land Bank Program as of the end of the preceding year."

Rationale for Alternative #1:

This suggested amendment saves the incentive of the Alaska Land Bank. It also tries to satisfy the desire that Native lands be protected from loss of ownership by additionally protecting them from loss upon dissolution of the corporations, bankruptcy and creditor proceedings. These latter two protections are not clearly provided under the existing Land Bank in section 907 of ANILCA.

This approach depends on the Land Bank to achieve conservation of undeveloped lands and protect against loss of Native ownership of undeveloped lands. This approach depends on the negotiation process, at least with respect to lands covered by a Land Bank agreement.

Depending on how well the Department reduces Land Bank agreements to forms, this approach achieves better conservation through compatible management, resource planning, durational agreements, etc., than does the existing Section 13 in H.R. 278. Although, this approach achieves better conservation, this approach may achieve it on less of the pool of undeveloped Native lands, because this approach may require negotiation, at least over the lands covered by the agreement.

The original Section 13 undercuts the Land Bank by granting Native corporations tax and other immunities without receiving in return the State, Federal and public benefits that accrue under the Land Bank.

The suggested amendments also solves two problems that have emerged with section 907, the Land Bank authority. First, section 907(a)(2) could be interpreted to require the Secretary to enter into an agreement where the lands subject to it exclude the lands most valuable for protection under the agreement. The suggested amendment provides that the lands subject to the agreement be identified by a map and land description acceptable to the parties. The purpose of this technical amendment is to clarify that the lands covered by an agreement are subject to negotiation. Second, section 907, as it appears in ANILCA, fails to address situations where lands subject to an agreement adj. in lands under different state or federal management requirements. Since the purpose of section 907 is to provide the federal or state governments with conservation of private lands, in exchange for tax immunities, other immunities, and other Native benefits, that purpose is furthered by providing for management of the subject lands in the manner that affords the most conservation.

Suggested Amendment, Alternative #2:

In Section 13 of H.R. 278, delete the immunity from real property taxes by any governmental entity.

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Rationale for Alternative #2:

This approach automatically achieves the primary Native desire, that undeveloped lands be protected from loss, and the primary public desire, that lands protected from loss are left undeveloped and undisposed. Since the protections are automatic for all undeveloped and undisposed land, these protections may be an incentive for conservation without the negotiation process.

This approach also preserves the Land Bank with respect to secondary Native and public concerns. To get tax immunity, resource planning assistance, fire protection, agency access, and public access, Native corporations and federal or state agencies would have to enter into durational Land Bank agreements.

The immunity from real property taxes is distinct from the other immunities in Section 13. Therefore, it is dropped by this alternative amendment. Tax immunity does not protect ownership of undeveloped land as much as it protects the financial status of the corporations. Even if taxes are unpaid, the undeveloped land is immune under Section 13 from a creditor claim by the taxing government.

Furthermore, tax immunity is available under the Land Bank. It should be available only under the Land Bank with other Native and public benefits that are separate from concerns over loss of Native ownership of land. If tax immunity is available only under the Land Bank, then it, along with other Native benefits, may provide an incentive for Land Bank agreements.

RECEIVED APR 23 1987

ALASKA LAND BANK AGREEMENT

This AGREEMENT, effective _____, 198_, between Alaska Peninsula Corporation ("Owner") and the UNITED STATES OF AMERICA, acting through the Fish and Wildlife Service ("Agency"). The Owner and the Agency are referred to collectively as "parties" and individually as "party".

RECITALS

A. The Owner is an Alaskan Native Corporation organized and existing pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. Section 1601, et seq., as amended ("ANCSA"), and the laws of the State of Alaska.

B. The Owner is the grantee of lands or interests in lands pursuant to ANCSA or the Alaska National Interest Lands Conservation Act, 43 U.S.C. Section 1631 ("ANILCA").

C. The Owner desires to participate in the Alaska Land Bank Program established by section 907 of ANILCA, 43 U.S.C. Section 1636.

D. The Agency considers compliance with this agreement as achieving compatibility with the management plan for adjoining federal lands or those federal lands directly affected by the use of the Owner's lands.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration described in this agreement, the parties agree as follows:

1. AUTHORITY FOR AGREEMENT

This agreement is entered into pursuant to section 907 of ANILCA. This agreement is subject to and shall be interpreted in a manner consistent with ANILCA, together with the applicable provisions of ANCSA, and any amendments to these acts.

2. SUBJECT LANDS

(a) Subject to valid existing rights, the lands covered by this agreement, which are referred to as "subject lands", are those lands or interests in lands that have been conveyed to the Owner pursuant to ANCSA or ANILCA (including land exchanges), are still owned by the Owner, and are described in Exhibit 1, which Exhibit is incorporated in and made a part of the agreement.

(b) Upon withdrawal of lands from the agreement under Paragraph 9, upon the conveyance of lands by the Owner pursuant to Section 14(c) of ANCSA, 43 U.S.C. Section 1613(c) or upon conveyance of lands to a third party by operation of law (e.g., Native allotment, patented mining claim, etc.), the lands shall cease to be subject lands, and Exhibit 1 shall be amended accordingly. The parties agree to the execution in recordable form of any amendments to Exhibit 1.

3. TERM

(a) This agreement shall become effective only upon its execution by all parties, and its effective date shall be the date when the last of the parties signs the agreement. This agreement shall remain in full force and effect for ten (10) years following the effective date.

(b) Unless written notice is provided by any party at least three (3) months prior to the expiration of the agreement that the party does not intend to renew the agreement, this agreement shall be renewed for successive terms of five (5) years each. The parties agree to the execution of a document in recordable form evidencing each such renewal.

4. OBLIGATIONS OF OWNER

(a) The Owner shall have the following obligations with respect to all the subject lands:

(i) Restriction Against Alienation. The Owner shall not alienate, transfer, assign, mortgage, or pledge the subject lands, except as provided in section 14(c) of ANCSA.

(ii) Development or Improvement. The Owner shall not permit development or improvement on the subject lands except as provided in Paragraph 8 of this agreement.

(iii) Access. The Owner shall permit reasonable access by federal agency personnel and their agents or representatives to the subject lands for purposes of administering the adjoining federal lands and carrying out the provisions of the agreement, and shall permit reasonable access by State agency personnel to the subject lands for purposes of conserving fish and wildlife.

(b) To achieve compatibility with the relevant Agency management plan under Section 907 (b)(2) of ANILCA, the Owner shall have the following additional obligations regarding those portions of the subject lands ("management lands") which adjoin federal lands or the use of which directly affects federal lands (which "management lands" are described in Exhibit 2, which exhibit is incorporated in and made in part of the agreement):

(i) Resource Protection. (A) The owner shall manage and use the management lands in a manner that does not materially impair either the fish and wildlife habitats on such lands or the fish and wildlife populations within the boundaries of Alaska Peninsula National Wildlife Refuge ("APNWR"), Becharof National Wildlife Refuge ("BNWR"), or Katmai National Park and Preserve ("KNPP"): Provided, that hunting, fishing, subsistence uses and other authorized taking of fish and wildlife in accordance with law shall be permitted on the management lands.

(B) The Owner also shall manage and use those portions of the management lands that are located within the boundaries of APNWR, BNWR or KNPP in such manner as not materially to impair any historic, archeological or paleontological resources or any outstanding geological features on such management lands.

(ii) Equipment Use. The use of snowmachines shall be permitted on the management lands only during periods of adequate snow cover or upon frozen river conditions. The use of motorboats, aircraft, other means of motorized surface transportation permitted in APNWR, BNWR or KNPP or non-motorized means of surface transportation is permitted within the management lands so long as such use does not materially impair the purposes and values for which APNWR, BNWR, or KNPP were established within their boundaries.

(iii) Consultation. The Owner agrees to consult with the Agency on appropriate limitations, if any, on the location, duration and scope of uses of the subject lands in order to enhance the quantity and quality of Alaska's renewable resources and to facilitate the coordinated management of APNWR, BNWR or KNPP and the management lands.

5. IMMUNITIES

By operation of section 907(c)(2) of ANILCA, so long as the Owner is in compliance with the agreement, the Owner shall, as to the subject lands, be entitled to immunity from:

- (a) adverse possession;
- (b) real property taxes and assessments by the United States, the State or any political subdivision of the State: Provided, that this immunity shall cease if the lands involved are leased or developed, as these terms are used in section 21(d) of ANCSA, 43 U.S.C. Section 1620(d); and
- (c) judgment in any action at law or equity to recover sums owed or penalties incurred by the Owner or any officer, director or stockholder of the Owner.

6. OBLIGATIONS OF THE AGENCY

(a) To the extent the subject lands are specifically identified by the Owner in writing to the Agency as having particular subsistence, cultural or religious importance, the Agency personnel, or their agents or representatives, shall give reasonable prior written notice to the Owner on a seasonal basis of their intended access to the identified subject lands for the purposes of carrying out this agreement and shall use reasonable care to avoid impairing the subsistence, cultural or religious values of the subject lands. Unless specific lands are so identified, access by the Agency personnel, or their agents or representatives, shall be without prior notice.

(b) Upon written notice by the Owner of a legal action by anyone not a party to this agreement which challenges either the terms of this agreement or the application of the immunities set forth in Paragraph 5 to the subject lands, the Agency agrees to consider, and where appropriate may recommend to the Department of Justice, intervention in the action by the United States to preserve the protections of this agreement.

7. OTHER BENEFITS

In addition to any requirement of applicable law, including the provisions of section 21(e) of ANCSA and section 907(e) of ANILCA regarding wildlands fire protection services, the Agency in its sole discretion may under section 907(c)(1) of ANILCA provide technical and other assistance to the owner with respect to fire control, trespass control, resource and land use planning, the management of fish and wildlife, and the protection, maintenance and enhancement of any special values of the subject lands, all with or without reimbursement as agreed upon by the parties. This paragraph is not an obligation by the Agency to provide those services or assistance, but rather an authorization to be exercised in the sole discretion of the Agency on a case-by-case basis.

8. PERMITTED DEVELOPMENTS AND IMPROVEMENTS

(a) Existing Developments and Improvements

(i) Within 120 days of the effective date of this agreement, the parties shall jointly prepare a list of developments or improvements existing on the subject lands as of the effective date of this agreement, which list shall be attached as Exhibit 3 and incorporated herein.

(ii) The list shall include the location and a brief description of each development or improvement. In the event either party, after the execution of this agreement, discovers any developments or improvements, which were in existence prior to the execution of this agreement, but which were not included in Exhibit 3, it shall notify the other party, and such development or improvement, along with its approximate location and description, shall be added to Exhibit 3.

(iii) Developments and improvements existing on the effective date of this agreement may be repaired and replaced, but, except with the consent in writing of the Agency, may not be expanded or relocated.

(b) New Developments and Improvements

(i) Subject to the proviso of paragraph 5(b) of this agreement, the Owner may develop or improve any of the subject lands, if the development or improvement is approved in writing by the Agency. When seeking approval from the Agency of any proposed development or improvement, the Owner will provide the Agency with a written description of the proposal, including any plans or specifications, which shall set forth the location, nature and potential impacts of the proposed development or improvement. The Agency shall within 45 days of the receipt of such proposal provide the Owner with the Agency's determination, unless the Owner is advised in writing by the Agency during such 45-day period that a longer period of time is reasonably required to complete review of the proposal. In the absence of a determination by the Agency or a request for additional time within 45 days, the proposal shall be deemed approved.

(ii) Approval of a proposed development or improvement shall be given by the Agency on the following conditions:

(A) For developments and improvements within the exterior boundaries of APNWR, BNWR or KNPP, the Agency will approve developments and improvements, as if the subject lands were federal lands, that conform to the purposes and values for which the APNWR, BNWR or KNPP were established, or for which the areas are administered, as set forth in the management plans.

(B) For developments and improvements outside the exterior boundaries of APNWR, BNWR or KNPP, the Agency will approve developments and improvements that do not materially impair, within their boundaries, the purposes and values for which the APNWR, BNWR or KNPP were established, or for which the APNWR, BNWR or KNPP are administered, as set forth in the management plans.

(iii) As used in this paragraph (8), "develop or improve" or "development(s) or improvement(s)" means any specific project by the Owner which constitutes a modification of the management lands from their existing condition on the effective date of this agreement or any renewal of this agreement which exceeds \$1,000 in costs, including labor and materials, or any modification of other subject lands which exceeds \$5,000 in costs, including labor and materials: Provided, that projects excluded from the definition of development or improvement still must comply with the requirements of Paragraph 4(b).

(c) The approval of any development or improvement in accordance with this agreement shall not waive the limitation on the provision of free fire protection services found in section 21(e) of ANCSA, 43 U.S.C. Section 1620(e).

(d) The agency, in authorizing leases or developments under this section, makes no determination regarding their immunity from taxation or assessment.

9. WITHDRAWAL

(a) All or part of the subject lands may be withdrawn from the Alaska Land Bank program and from the provisions of this agreement at any time, but not earlier than ninety (90) days after the Owner:

(i) submits written notice of the withdrawal to the Agency; and

(ii) pays all federal, State and local property taxes and assessments which, during the particular term of the agreement then in effect, would have been incurred except for the agreement, together with interest on such taxes and assessments in an amount to be determined at the highest rate of interest charged with respect to delinquent property taxes by the federal, State or local taxing authority, if any. The Owner shall notify the Agency of the payment of any applicable taxes and assessments.

(b) Upon withdrawal of lands from this agreement, the obligations of all parties and the immunities set forth in Paragraph 5 shall cease with respect to the withdrawn lands. As to the remaining subject lands, if any, not withdrawn from the agreement, the agreement shall remain in full force and effect.

(c) The size of the tracts of subject lands to be withdrawn shall be determined by the Owner in its sole discretion.

10. TERMINATION FOR DEFAULT: REMEDIES

(a) If either party materially breaches any of the provisions of this agreement, the party not in breach shall give the party in breach written notice of such breach. If, within sixty (60) days of receiving notice of breach the party in breach has failed either (i) to remedy the breach, or (ii) to institute judicial proceedings challenging the determination of breach, the party not in breach may terminate this agreement by giving written notice of termination within 90 days thereafter.

(b) In addition or in the alternative, breach under this agreement shall also be subject to those judicial remedies available at law or in equity, including specific performance.

(c) During the sixty (60) day period allowed for cure of a breach of the agreement, or, if a remedial action has been commenced in good faith by the party in breach, during such additional period as needed to cure the breach or while litigation challenging the determination of breach is pending, the agreement shall not be deemed to be terminated. If the Owner is claimed to be in breach, however, the agency may terminate all or part of any technical or other assistance provided pursuant to Paragraph 7 without following the procedures of this paragraph.

11. SURFACE/SUBSURFACE ESTATES

The parties recognize that, as to some or all of the subject lands, the Owner may own only the surface estate or subsurface estate in accordance with the provisions of ANCSA. The parties also recognize that, under section 907(a)(3) of ANILCA, this agreement cannot affect the rights or interests in lands held by a person or entity not a party to this agreement. Accordingly, to the extent the Owner has title to only the surface estate in all or a portion of the subject lands, this agreement shall not affect the rights of the subsurface owner. Similarly, to the extent the Owner has title to only the subsurface estate in all or a portion of the subject lands, this agreement shall not affect the rights of the surface owner.

12. RECORDATION

Upon execution by the parties, the Agency may cause this agreement, or any amendments, to be recorded with the State of Alaska and in the land records of the appropriate recording district.

13. NOTICE

Any notice under this agreement shall be in writing. Any notice, other than notice of breach, shall be effective upon personal delivery or upon mailing by United States certified mail, return receipt requested, postage prepaid. Notice of breach shall be effective upon actual receipt of the notice by the party in breach. Notices shall be addressed as follows:

- (a) If to the Owner: President, ALASKA PENINSULA CORPORATION,
P.O. Box 104360, Anchorage, Alaska 99510

- (b) If to the Agency: Refuge Manager, Alaska Peninsula/Becharof
National Wildlife Refuge, P.O. Box 277,
King Salmon, Alaska 99613

The address to which a party requests that notice be given may be changed at any time by giving written notice to the other party.

14. ADDITIONAL TERMS

(a) Officials Not To Benefit

No member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom but this provision shall be not construed to extend to the agreement if made with a corporation for its general benefit.

(b) Expenditures In Excess Of Appropriations

Nothing herein shall be construed as obligating the Agency to expend, or as involving the United States in any obligation for the future payment of money, in excess of appropriations authorized by law.

(c) Waiver

The failure of any party to insist upon the strict performance of any provision of this agreement or to exercise any right, power or remedy under this agreement shall not constitute a waiver of the same or any other provision.

(d) Modification and Interpretation

This agreement may be modified or amended by the parties to contain additional terms and conditions. Amendments or modifications may be made only by a document in writing executed by the parties. The parties agree that this agreement represents all the terms and conditions of the agreement. Any oral representations made by any party which are not incorporated into this agreement in writing are not binding.

(e) Other Federal Laws

Nothing in this agreement is deemed to affect or modify other statutory authorities of the Agency or any other rights of the Owner.

(f) State Jurisdiction

Except as provided in Section 5 hereof, nothing in this agreement shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska.

15. DEFINITIONS

As used in this agreement, the following terms have the following definitions:

(a) "Agreement" means this Alaska Land Bank Agreement between the parties referred to on page 1, including all exhibits and amendments.

(b) "Owner" means the Alaska Native Corporation referred to on page 1, its successors and assigns.

(c) "Subsistence uses" has the meaning set forth in section 803 of ANILCA, 16 U.S.C. Section 3113.

(d) "Management Plan"

(i) "Management plan" as used in this agreement means the comprehensive conservation plan or the general management plan developed and adopted pursuant to section 304(g) or section 1301 of ANILCA, including plans incorporated by reference in the management plan, or general management plan, for implementing the provisions of the management plan, for the APNWR, BNWR or the general management plan, for the KNPP.

(ii) The identified management plan shall be applicable to this agreement, even if the plan is finalized or amended during the term of the agreement.

(iii) This agreement shall be reviewed for any necessary conforming modifications following adoption of a comprehensive conservation plan for the affected conservation units.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates stated below.

ALASKA PENINSULA CORPORATION

DATE: _____ By _____
 Its President

DATE: _____ By _____
 Its Secretary

UNITED STATES OF AMERICA
 Acting by and through the
 Secretary of the Interior

DATE: _____ By _____
 Its Asst. Secretary for Fish and Wildlife and Parks

UNITED STATES OF AMERICA
 Through the Fish and Wildlife Service

DATE: _____ By _____
 Its Acting Regional Director, Region 7

STATE OF ALASKA)
 JUDICIAL DISTRICT) ss. -

THIS IS TO CERTIFY that on ____ day of _____, 198_, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared _____ who declared to me that he is the Assistant Secretary for Fish and Wildlife and Parks, who is known to me to be the person who executed the within instrument on behalf of the agency herein named, and who acknowledged to me that the same was signed as a free act and deed of the agency for the uses and purposes therein stated pursuant to the laws and regulations of the United States.

WITNESS my hand and notarial seal the day and year first above written in this certificate.

 Notary Public in and for Alaska
 My Commission Expires: _____

STATE OF ALASKA)
_____) JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on ___ day of _____, 198_, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared _____ who declared to me that he is the Acting Regional Director, Region 7, who is known to me to be the person who executed the within instrument on behalf of the agency herein named, and who acknowledged to me that the same was signed as a free act and deed of the agency for the uses and purposes therein stated pursuant to the laws and regulations of the United States.

WITNESS my hand and notarial seal the day and year first above written in this certificate.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
 JUDICIAL DISTRICT) ss.

THIS IS TO CERTIFY that on the ____ day of _____, 198_, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared _____ and _____, who declared to me that they are the President and Secretary of Alaska Peninsula Corporation, respectively, who are known to me to be the persons who executed the within instrument on behalf of the corporation herein named, and who acknowledged to me that the same was signed as a free act and deed of the said corporation for the uses and purposes therein stated pursuant to its Bylaws or a resolution of its Board of Directors.

WITNESS my hand and notarial seal the day and year first above written in this certificate.

 Notary Public in and for Alaska
 My commission expires: _____

EXHIBIT 1

SUBJECT LANDS

All of the surface estate in those tracts or parcels of land as follows:

(Kokhanok)

Seward Meridian, Alaska (Unsurveyed)

T. 7 S., R. 30 W.

Secs. 18 and 19, all;
Secs. 25 to 29, inclusive, excluding the Copper River;
Sec. 30, all;
Secs. 31 and 32, excluding the Copper River;
Sec. 33, all;
Secs. 34 and 35, excluding the Copper river;
Sec. 36, all.

T. 8 S., R. 30 W.

Sec. 5, all;
Sec. 6, excluding the Copper River;
Secs. 7 and 8, all;
Sec. 17 to 21, inclusive, all;
Sec. 22, excluding Native allotment AA-7058 and Kakhonak Lake;
Secs. 23 to 26, inclusive, excluding Kakhonak Lake;
Sec. 27, excluding ANCSA Sec. 3(e) application AA-9004, Native allotment AA-7058 and Kakhonak Lake;
Secs. 28 to 34, inclusive, all;
Secs. 35 and 36, excluding Kakhonak Lake.

T. 7 S., R. 31 W.

Sec. 7, excluding Native allotment AA-6507 and Iliamna Lake;
Secs. 13 and 14, all;
Secs. 15 to 22, inclusive, excluding Iliamna Lake;
Sec. 23, excluding U.S. Survey 4672, Native allotment AA-7344 and Iliamna Lake;
Secs. 24 and 25, all;
Sec. 26, excluding Native allotment AA-7344 and Iliamna Lake;
Secs. 27 to 33, inclusive, excluding Iliamna Lake;
Sec. 34, excluding Native allotment AA-6232 and Iliamna Lake;
Sec. 35, excluding U.S. Survey 4576, Native allotments AA-6232, AA-7555 Parcels A and B and Iliamna Lake;
Sec. 36, all.

T. 8 S., R. 31 W.

Sec. 1, excluding Native allotment AA-6222 and the Copper River;
Sec. 2, excluding Native allotment AA-6222, A-059683, the Copper River, Lower Pike Lake and unnamed slough;
Sec. 3, excluding Lower Pike Lake and Iliamna Lake;
Secs. 4 and 5, excluding Iliamna Lake;

Secs. 6 and 7, excluding Native allotment AA-6219 and Iliamna Lake;
 Sec. 8, excluding U.S. Survey 3427, Native allotment AA-6211
 Parcel D and Iliamna Lake;
 Sec. 9, excluding U.S. Survey 3427, Native allotment AA-7546 and
 Iliamna Lake;
 Sec. 10, all;
 Secs. 11 and 12, excluding the Copper River;
 Sec. 13, all;
 Sec. 14, excluding Native allotment A-063810 and Iliamna Lake;
 Sec. 15, excluding Native allotments AA-6213 Parcel A, A-063810 and
 Iliamna Lake;
 Secs. 16 to 19, inclusive, excluding Iliamna Lake;
 Secs. 20 and 21, excluding Native allotment AA-8065 Parcel C and
 Iliamna Lake;
 Secs. 22 and 23, excluding Native allotments AA-7544, A-063810 and
 Iliamna Lake;
 Sec. 24, all;
 Sec. 25, excluding U.S. Survey 3228, Native allotment AA-6265 and
 Iliamna Lake;
 Sec. 26, excluding Native allotment AA-6265 and Iliamna Lake;
 Sec. 27, excluding Iliamna Lake;
 Sec. 28, excluding Native allotments AA-7899, AA-8065 Parcel D and
 Iliamna Lake;
 Sec. 29, excluding Native allotments AA-7898, AA-7899 and Iliamna
 Lake;
 Sec. 30, excluding Native allotment AA-8065 Parcel B and Iliamna
 Lake;
 Sec. 31, excluding Iliamna Lake;
 Sec. 32, excluding Native allotments AA-7898, AA-7899 and Iliamna
 Lake;
 Sec. 33, excluding Native allotment AA-7899 and Iliamna Lake;
 Sec. 34, excluding Native allotments AA-6259, AA-8065 Parcel A,
 A-063274 Parcel B and Iliamna Lake;
 Sec. 35, excluding Native allotment AA-8252 and Iliamna Lake;
 Sec. 36, excluding U.S. Survey 3228, Native allotment AA-8252 and
 Iliamna Lake.

T. 9 S., R 31 W.

Sec. 1, all;
 Sec. 2, excluding Native allotments AA-2714 and A-052690 Parcel B;
 Sec. 3, excluding Native allotments AA-2714, AA-6211 Parcel B, AA-7345,
 A-052510, A-52690 Parcel B, and Iliamna Lake;
 Sec. 4, excluding Native allotments AA-8063, AA-8252, A-052510 and
 Iliamna Lake;
 Sec. 5, excluding Iliamna Lake;
 Sec. 6, excluding Native allotment AA-6123 and Iliamna Lake;
 Sec. 7, excluding Iliamna Lake;
 Sec. 8, all;
 Sec. 9, excluding Native allotment A-052510;
 Sec. 10, excluding Native allotments AA-6211 Parcel B, A-052510
 and A-052690 Parcel B;
 Secs. 15 to 18, inclusive, all.

T. 7 S., R. 32 W.

Secs. 12, 26 and 27, excluding Iliamna Lake;
Secs. 34, 35 and 36, excluding Iliamna Lake.

T. 8 S., R. 32 W.

Sec. 1, excluding Native allotment AA-6219 and Iliamna Lake;
Secs. 2 to 5, inclusive, excluding Iliamna Lake;
Secs. 8 and 9, excluding Iliamna Lake;
Secs. 10 and 11, all;
Sec. 12, excluding Native allotment AA-6219;
Sec. 13, all;
Secs. 14, 15 and 16, excluding Iliamna Lake;
Secs. 21 to 27, inclusive, excluding Iliamna Lake;
Sec. 29, excluding Iliamna Lake;
Secs. 31 to 36, inclusive, excluding Iliamna Lake.

T. 9 S., R. 32 W.

Sec. 1, excluding Native allotment AA-6123 and Iliamna Lake;
Sec. 2, excluding U.S. Survey 5546 and Iliamna Lake;
Sec. 3, excluding Iliamna Lake;
Secs. 4 to 11, inclusive, all;
Sec. 12, excluding Native allotment AA-6260 and Iliamna Lake;
Sec. 13, excluding Native allotment AA-6260;
Secs. 14 to 18, inclusive, all;
Secs. 19 and 30, excluding Gibraltar Lake.

T. 8 S., R. 33 W.

Secs. 33 and 34, excluding Iliamna Lake;
Sec. 36, excluding U.S. Survey 894, Native allotment AA-6261 and Iliamna Lake.

T. 9 S., R. 33 W.

Secs. 1 and 2, all;
Sec. 5, all;
Sec. 6, excluding Iliamna Lake;
Sec. 7, all;
Sec. 8, excluding Native allotment AA-6268;
Sec. 9, excluding Native allotments AA-6263 and AA-6268;
Secs. 11 and 12, all;
Sec. 13, excluding Native allotment A-052505;
Sec. 22, all;
Sec. 24, excluding Native allotments AA-6216, A-052505 and Gibraltar Lake;
Sec. 25, excluding Gibraltar Lake;
Secs. 26 and 27, all.

T. 9 S., R. 34 W.

Secs. 1 and 2, excluding Iliamna Lake;
Sec. 9, excluding Native allotments AA-6210, AA-6266 and Iliamna Lake;
Sec. 10, excluding Iliamna Lake;
Sec. 11, excluding Native allotment AA-6205 and Iliamna Lake;
Sec. 12, all.

Seward Meridian, Alaska (Unsurveyed)T. 8 S., R. 33 W.

Sec. 35, excluding Native allotments AA-6261, AA-6264, AA-6267, Gibraltar Creek, and Iliamna Lake.

T. 9 S., R. 33 W.

Sec. 3, excluding Native allotment AA-6261 and Gibraltar Creek;
 Sec. 4, excluding Native allotments AA-6261, AA-6264, AA-6267 and Gibraltar Creek;
 Sec. 10, excluding Native allotment AA-6263 and Gibraltar Creek;
 Sec. 14, excluding Native allotment A-052505 and Gibraltar Creek;
 Sec. 15, excluding Gibraltar Creek;
 Sec. 23, excluding Native allotments AA-6216, AA-6262, A-052505, Gibraltar Lake and Gibraltar Creek.

Seward Meridian, Alaska (Unsurveyed)T. 8 S., R. 30 W.

Sec. 27, those lands formerly within Alaska Native Claims Settlement Act Sec. 3(e) application AA-9004.

Seward Meridian, Alaska (Unsurveyed)T. 9 S., R. 32 W.

Secs. 28, 29, 31, and 32, excluding Gibraltar Lake;
 Secs. 33 and 34, excluding Gibraltar Lake.

T. 10 S., R. 32 W.

Secs. 1 to 4, inclusive, excluding Gibraltar Lake;
 Secs. 10, 11, and 12, excluding Gibraltar Lake.

Seward Meridian, Alaska (Unsurveyed)T. 8 S., R. 30 W.

Secs. 2, 3, and 4, all;
 Secs. 10 and 11, all.

(Newhalen)

Seward Meridian, Alaska (Unsurveyed)T. 4 S., R. 33 W.

Sec. 31, all;
 Sec. 32, excluding Newhalen River.

T. 5 S., R. 33 W.

- Sec. 5, excluding U.S. Survey 2644 and Native allotments AA-7125 Parcel B and AA-8203;
 Sec. 6, excluding Native allotment AA-8203;
 Sec. 7, excluding Native allotments AA-8142 and AA-8203;
 Sec. 8, excluding U.S. Survey 2644 and Native allotments AA-8142 and AA-8203;
 Sec. 15, W1/2, excluding U.S. Survey 2644 and Native allotment AA-7559 Parcel C;
 Sec. 16, excluding U.S. Survey 2644;
 Sec. 17, excluding U.S. Survey 2644, Native allotment AA-8161 Parcel A and Newhalen River;
 Secs. 18 and 19, excluding Newhalen River;
 Sec. 20, excluding Native allotment AA-8161 Parcel A and Newhalen River;
 Sec. 21, excluding U.S. Survey 4975 and Newhalen River;
 Sec. 22, W1/2, excluding Iliamna Lake;
 Sec. 27, W1/2, excluding Native allotment AA-6134 Parcel A, Newhalen River and Iliamna Lake;
 Sec. 28, excluding Native allotments AA-6134 Parcel A, AA-6153 Parcel B, Newhalen River and Iliamna Lake;
 Secs. 29 to 32, inclusive, all;
 Sec. 33, excluding Newhalen River and Iliamna Lake.

AND

Those portions of U.S. Survey No. 2644, Alaska, Iliamna Air Navigation Site, within the following protracted sections:

- Sec. 5;
 Sec. 8, excluding Quitclaim Deed AA-8983;
 Sec. 15, W1/2;
 Sec. 17, excluding Quitclaim Deed AA-8983.

T. 6 S., R. 33 W.

- Secs. 4 and 5, excluding Iliamna Lake;
 Sec. 6, all;
 Secs. 7 and 8, excluding Iliamna Lake.

T. 5 S., R. 34 W.

- Sec. 1, excluding Newhalen River;
 Secs. 2 and 3, all;
 Secs. 7 to 11, inclusive, all;
 Secs. 12 and 13, excluding Newhalen River;
 Sec. 14, excluding Native allotment AA-6217;
 Secs. 15 to 22, inclusive, all;
 Sec. 23, excluding Native allotment AA-6217;
 Sec. 24 to 36, inclusive, all.

T. 6 S., R. 34 W.

Secs. 1 to 6, inclusive, all;
 Sec. 7, excluding Native allotment AA-6291 and Iliamna Lake;
 Sec. 8, excluding Native allotments AA-6291, A-052452 and Iliamna Lake;
 Sec. 9, excluding Native allotments A-052452, AA-7126 and Iliamna Lake;
 Sec. 10, excluding Native allotment AA-7126;
 Secs. 11 to 15, inclusive, excluding Iliamna Lake;
 Sec. 16, excluding Native allotment A-052452 and Iliamna Lake;
 Secs. 17 and 18, excluding Iliamna Lake;
 Secs. 23 and 24, excluding Iliamna Lake.

T. 5 S., R. 35 W.

Secs. 12, 13, 14 and 15, all;
 Secs. 22 to 26, inclusive, all;
 Sec. 27, excluding Native allotment AA-8160;
 Secs. 28 to 36, inclusive, all.

T. 6 S., R. 35 W.

Secs. 1 to 9, inclusive, all;
 Secs. 10 and 11, excluding Native allotment A-052447;
 Sec. 12, all;
 Sec. 13, excluding Iliamna Lake;
 Sec. 14, excluding Native allotments A-052447, AA-6130, AA-6290 and Iliamna Lake;
 Sec. 15, excluding Native allotments A-052447 and AA-6130;
 Secs. 16, 17, and 18, all;
 Secs. 19, 20 and 21, excluding Iliamna Lake;
 Sec. 22, excluding Native allotments AA-6130, AA-6292 and Iliamna Lake;
 Sec. 23, excluding Native allotments AA-6130, AA-6290, AA-6292 and Iliamna Lake;
 Sec. 30, excluding Iliamna Lake.

Seward Meridian, Alaska (Unsurveyed)T. 5 S., R. 35 W.

Secs. 1, 2, and 11, all.

(Port Heiden)

Seward Meridian, Alaska (Surveyed)T. 40 S., R. 59 W.

Those portions of the township more particularly described as (protracted):
 Secs. 1 to 36, inclusive, excluding Meshik River.

T. 40 S., R. 60 W.

Those portions of the township more particularly described as (protracted):
 Secs. 12 and 13, all;
 Secs. 24 and 25, all.

Seward Meridian, Alaska (Unsurveyed)T. 37 S., R. 58 W.

Secs. 19 and 20, all;
 Secs. 28, 29 and 30, all;
 Sec. 31, excluding Lots 1 and 2 of U.S. Survey 4347 and Native allotment AA-7938;
 Sec. 32, excluding Lots 1 and 2 of U.S. Survey 4347;
 Sec. 33, all.

T. 38 S., R. 58 W.

Sec. 6, excluding Lots 1 and 2 of U.S. Survey 4347.

T. 37 S., R. 59 W.

Sec. 4 (fractional), all;
 Sec. 9 (fractional), excluding Native allotment AA-7172;
 Sec. 10, excluding Native allotment AA-7940;
 Sec. 14, all;
 Sec. 15, excluding Public Land Order 2374 Tract A, Quitclaim Deed AA-5456 and Native allotment AA-7940;
 Sec. 16 (fractional), excluding Public Land Order 2374 Tract A and Quitclaim Deed AA-5456;
 Sec. 17 (fractional), excluding Quitclaim Deed AA-5456 and Native allotment AA-7173 Parcel C;
 Sec. 20 (fractional), excluding Native allotment AA-7170;
 Sec. 21, excluding Quitclaim Deed AA-5456 and Native allotment AA-7170;
 Secs. 22 to 27, inclusive, excluding Quitclaim Deed AA-5456;
 Sec. 28 (fractional), excluding Quitclaim Deed AA-5456 and Native allotment AA-7170;
 Sec. 29 (fractional), excluding Native allotment AA-7170;
 Sec. 33 (fractional), all;
 Secs. 34 and 35, excluding Quitclaim Deed AA-5456;
 Sec. 36, all.

T. 38 S., R. 59 W.

Sec. 1, excluding Native allotment AA-7939;
 Sec. 2, excluding Native allotments AA-7168 and AA-7939;
 Sec. 3, all;
 Sec. 4 (fractional), excluding U.S. Survey 1220, U.S. Survey 5578, Public Land Order 2374 Tract B, and Native allotment A-062335 Parcel A;
 Sec. 6 (fractional), all;
 Sec. 8 (fractional), excluding U.S. Survey 481, U.S. Survey 5578, and Public Land Order 2374 Tract B;
 Sec. 9 (fractional), excluding Public Land Order 2374 Tract B and U.S. Survey 5578;
 Sec. 10, all;
 Secs. 11 and 12, excluding Native allotment AA-7939;
 Secs. 13, 14 and 15, all;
 Secs. 16 and 17 (fractional), all;

Sec. 21 (fractional), all;
 Secs. 22 to 27, inclusive, all;
 Sec. 28 (fractional), all;
 Secs. 33 and 34 (fractional), all;
 Secs. 35 and 36, all.

T. 39 S., R. 59 W.

Secs. 1 and 2, all;
 Sec. 3 (fractional), all;
 Sec. 10 (fractional), all;
 Secs. 11 to 14, inclusive, all;
 Sec. 15 (fractional), all;
 Sec. 19 (fractional), excluding Yellow Bluff Creek;
 Sec. 20 (fractional), excluding Native allotment AA-7167 and Meshik River;
 Secs. 21 and 22 (fractional), excluding Meshik River;
 Secs. 23, 24 and 25, all;
 Secs. 26 to 29, inclusive, excluding Meshik River;
 Secs. 30 to 33, inclusive, all;
 Secs. 34, 35 and 36, excluding Meshik River.

(South Naknek)

Seward Meridian, Alaska

T. 18 S., R. 44 W. (Unsurveyed)

Sec. 5, that portion west of the left bank of the Naknek River;
 Secs. 6 and 7, all;
 Sec. 8, that portion west of the left bank of the Naknek River;
 Sec. 9, that portion south and east of the left bank of the Naknek River;
 Sec. 10, that portion south of the left bank of the Naknek River excluding ANCSA Sec. 3(e) application AA-25572 Site 2;
 Sec. 12, that portion south of the left bank of the Naknek River;
 Sec. 13, all;
 Sec. 14, that portion south of the left bank of the Naknek River;
 Sec. 15, that portion south and west of the left bank of the Naknek River;
 Sec. 16, that portion south and east of the left bank of the Naknek River;
 Sec. 17, that portion south and west of the left bank of the Naknek River;
 Sec. 18, all;
 Sec. 19, excluding Native allotment AA-6229 Parcel B;
 Secs. 20 to 29, inclusive, all;
 Sec. 30, excluding Native allotment AA-7906 Parcel A;
 Secs. 31 to 36, inclusive, all.

T. 19 S., R. 44 W. (Unsurveyed)

Secs. 1 to 9, inclusive, all.

T. 17 S., R. 45 W. (Partially Surveyed)

- Sec. 17, that portion south of the left bank of the Naknek River;
 Sec. 18, that portion south of the left bank of the Naknek River
 excluding Native allotments AA-6609 and AA-6719 Parcel A;
 Sec. 19, excluding Native allotment AA-6609;
 Secs. 20 and 21, those portions south and west of the left bank
 of the Naknek River;
 Sec. 26, that portion west of the left bank of the Naknek River
 excluding U.S. Survey 5502, Native allotments AA-6157 Parcel A and
 AA-7863;
 Sec. 27, that portion south of the left bank of the Naknek River
 excluding U.S. Survey 5502, Native allotments AA-7862 and
 AA-7863;
 Secs. 28 and 29, excluding the Naknek River;
 Secs. 30, 31 and 32, all;
 Sec. 33, excluding Native allotment A-067640;
 Sec. 34, excluding Native allotments AA-7862 and AA-7863;
 Sec. 35, that portion south and west of the left bank of the
 Naknek River excluding U.S. Survey 5502, Native allotments
 AA-7862 and AA-7863;
 Sec. 36, that portion south of the left bank of the Naknek River.

T. 18 S., R. 45 W.

- Secs. 1, 2 and 3, all;
 Sec. 4, excluding Native allotment A-067640;
 Secs. 5 to 12, inclusive, all.

T. 17 S., R. 46 W. (Partially Surveyed)

- Sec. 5, that portion south of the left bank of the Naknek River
 excluding U.S. Survey 543 and Native allotment AA-6234;
 Sec. 6, that portion south of the left bank of the Naknek River
 excluding U.S. Survey 527, U.S. Survey 528, U.S. Survey 1572,
 U.S. Survey 1573 and Native allotment AA-7251 Parcels A and B;
 Sec. 7, excluding Native allotments AA-6732 and AA-7251 Parcels
 A and B;
 Sec. 8, excluding Native allotments AA-6234 and AA-7584 Parcel B;
 Sec. 9, excluding Native allotment AA-6284 and the Naknek River;
 Secs. 10, 13 and 14, those portions south of the left bank of the
 Naknek River;
 Secs. 15, 16 and 17, all;
 Sec. 18, excluding Native allotment AA-6732;
 Secs. 19 to 36, all.

T. 18 S., R. 46 W.

- Secs. 1 to 12, inclusive, all.

T. 17 S., R. 47 W.

- Sec. 1, that portion south and east of the left bank of the Naknek River excluding U.S. Survey 527 and Native allotment AA-7251 Parcel A;
- Sec. 9, that portion south of the left bank of the Naknek River excluding U.S. Survey 127, U.S. Survey 2332 and U.S. Survey 4686;
- Sec. 10, that portion south of the left bank of the Naknek River excluding U.S. Survey 1105, U.S. Survey 1576, U.S. Survey 2330, U.S. Survey 2332, U.S. Survey 3007, U.S. Survey 4879 and U.S. Survey 5041;
- Sec. 11, excluding U.S. Survey 69, U.S. Survey 1424, U.S. Survey 1425, U.S. Survey 1581, U.S. Survey 2875, U.S. Survey 2957, U.S. Survey 3008, U.S. Survey 4879, Native allotments AA-6237, AA-6729 and the Naknek River;
- Sec. 12, excluding U.S. Survey 1028, U.S. Survey 1425, Native allotments AA-6113 Parcel A, AA-6233, AA-6729, AA-6730, AA-6731, AA-6732, AA-7251 Parcel A, AA-7584 Parcel A and the Naknek River;
- Sec. 13, excluding Native allotments AA-6729, AA-6730 and AA-6732;
- Sec. 14, excluding U.S. Survey 4879, Native allotments AA-2524, AA-6729 and A-058897;
- Sec. 15, excluding U.S. Survey 2331, U.S. Survey 4879, U.S. Survey 4971, Native allotments AA-2524, AA-7583, AA-7585 and A-058897;
- Sec. 16, excluding U.S. Survey 127, U.S. Survey 4686, U.S. Survey 4971, Native allotment AA-7585 and the Naknek River;
- Sec. 17 (fractional), excluding U.S. Survey 487, ANCSA Sec. 3(e) application AA-12834 and Native allotment AA-6133;
- Sec. 18, (fractional), all;
- Sec. 19, (fractional), excluding Native allotments AA-6285 and AA-6733;
- Sec. 20, all;
- Secs. 21 and 22, excluding Native allotment AA-7585;
- Sec. 23, excluding Native allotment AA-6236 Tract 1;
- Secs. 24 to 33, inclusive, all;
- Sec. 34, excluding Native allotment AA-6236 Tract 2;
- Secs. 35 and 36, all.

T. 18 S., R. 47 W. (Unsurveyed)

Secs. 1 and 12, all.

T. 17 S., R. 48 W. (Unsurveyed)

- Sec. 24 (fractional), excluding Native allotment AA-6285;
- Secs. 25, 26, 34 and 35 (fractional), all;
- Sec. 36, all.

T. 18 S., R. 48 W. (Unsurveyed)

- Sec. 2, all;
- Secs. 3, 4, 8 and 9 (fractional), all;
- Secs. 10 and 16, all;
- Secs. 17, 18 and 19 (fractional), all;
- Secs. 20 and 21, all;
- Secs. 28 to 32, inclusive, all.

T. 18 S., R. 49 W. (Unsurveyed)
 Secs. 24, 25 and 36 (fractional), all.

Seward Meridian, Alaska (Surveyed)

T. 17 S., R. 44 W.
 Sec. 31, Lots 5 to 12, inclusive, E1/2SW1/4, SW1/4SE1/4
 Sec. 32, Lot 5.

Seward Meridian, Alaska (Unsurveyed)

T. 18 S., R. 44 W.
 Sec. 10, that part formerly within Sec. 3(e) application
 AA-25572 located on the left bank of the Naknek River,
 excluding Naknek River.

(Ugashik)

Seward Meridian, Alaska (Unsurveyed)

T. 30 S., R. 48 W.
 Sec. 25, excluding ANCSA Sec. 3(e) application AA-25572 Site 1,
 Lower Ugashik Lake and Ugashik River;
 Sec. 26, excluding Ugashik River;
 Sec. 30, excluding Ugashik River;
 Sec. 31, all;
 Secs. 35 and 36, excluding Lower Ugashik Lake.

T. 31 S., R. 48 W.
 Sec. 2, excluding Lower Ugashik Lake;
 Sec. 3, all;
 Secs. 6 and 7, all;
 Sec. 10, all;
 Sec. 11, excluding Lower Ugashik Lake;
 Sec. 14, excluding Lower Ugashik Lake;
 Secs. 15 to 22, inclusive, all;
 Secs. 23 to 25, inclusive, excluding Lower Ugashik Lake;
 Secs. 26 to 36, inclusive, all.

T. 32 S., R. 48 W.
 Secs. 5 to 8, inclusive, all;
 Secs. 17 to 20, inclusive all.

T. 30 S., R. 49 W.
 Sec. 25, excluding Ugashik River;
 Sec. 36, all.

T. 31 S., R. 49 W.
 Sec. 1, all;
 Secs. 12 to 36, inclusive, all.

T. 32 S., R. 49 W.

Secs. 1 to 3, inclusive, all.

T. 30 S., R. 50 W.

Sec. 27, excluding Ugashik River;

Sec. 32, excluding Native allotment AA-7901 and Ugashik River;

Sec. 33, excluding Ugashik River;

Sec. 34, all;

Sec. 35, excluding Ugashik River.

T. 31 S., R. 50 W.

Secs. 1 to 3, inclusive, all;

Sec. 4, excluding Ugashik River;

Sec. 5, excluding Native allotment AA-7901 and Ugashik River;

Sec. 6, excluding Ugashik River;

Sec. 7, all;

Sec. 8, excluding Ugashik River;

Sec. 9, excluding U.S. Survey 556, U.S. Survey 4994, Trade and Manufacturing site AA-542 and Ugashik River;

Sec. 10, excluding Trade and Manufacturing site AA-542;

Secs. 11 to 15, inclusive, all;

Sec. 16, excluding U.S. Survey 1029, U.S. Survey 2324, U.S. Survey 4994, Native allotment AA-7001 and Ugashik River;

Secs. 17 to 21, inclusive, excluding Ugashik River;

Secs. 22 to 25, inclusive, all;

Secs. 26 and 27, excluding Dog Salmon River;

Sec. 28, all;

Sec. 29, excluding Ugashik River;

Sec. 30, all;

Sec. 31, excluding Dog Salmon River;

Secs. 32 and 33, all;

Secs. 34 to 36, inclusive, excluding Dog Salmon River.

Seward Meridian, Alaska (Surveyed)T. 30 S., R. 48 W.

Sec. 25, that portion formerly within Sec. 3(e) application AA-25572, excluding Ugashik River and Lower Ugashik Lake.

Seward Meridian, Alaska (Surveyed)T. 32 S., R. 48 W.

Sec. 30, excluding Dog Salmon River.

EXCLUSIONS FROM "SUBJECT LANDS"

Excluding from "Subject Lands" all those tracts or parcels of land described in the following documents:

Kokhanok:

1. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Modified Quit Claim Deed recorded in the Iliamna Recording District within Book 10, page 207-211.
2. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Modified Quit Claim Deed recorded in the Iliamna Recording District within Book 10, pages 218-229.
3. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Modified Quit Claim Deed recorded in the Iliamna Recording District within Book 10, pages 404-414.
4. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Deed recorded in the Iliamna Recording District within Book 12, pages 751-755.

Port Heiden:

1. City of Port Heiden/Alaska Peninsula Corporation Agreement to Convey Real Property and Grant of Right of Entry recorded in the Kvichak Recording District within Book 17, pages 775-793.

Newhalen:

1. City of Newhalen/Alaska Peninsula Corporation Agreement to Convey Real Property and Grant of Right of Entry recorded in the Iliamna Recording District within Book 10, pages 903-913A.
2. City of Newhalen/Alaska Peninsula Corporation 14(c)(3) Modified Quit Claim Deed recorded in the Iliamna Recording District within Book 10, pages 920-923.

South Naknek:

1. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Deed recorded in the Kvichak Recording District within Book 17 pages 556-559.
2. State of Alaska/Alaska Peninsula Corporation 14(c)(4) Quit Claim Deed recorded in the Kvichak Recording District within Book 12, pages 563-569.

Ugashik:

1. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Modified Quit Claim Deed recorded in the Kvichak Recording District within Book 13, pages 160-168.
2. State of Alaska/Alaska Peninsula Corporation 14(c)(3) Modified Quit Claim Deed recorded in the Kvichak Recording District within Book 16, pages 349-354.

EXHIBIT 2

MANAGEMENT LANDS

The following described lands, a portion of "Subject Lands", shall be "Management Lands" in accordance with Section 4(b) of this agreement:

(Port Heiden)

Seward Meridian, Alaska (Surveyed)

T. 40 S., R. 59 W.

Those portions of the township more particularly described as (protracted):
Secs. 1 to 36, inclusive, excluding Meshik River.

T. 40 S., R. 60 W.

Those portions of the township more particularly described as (protracted):
Secs. 12 and 13, all;
Secs. 24 and 25, all.

Seward Meridian, Alaska (Unsurveyed)

T. 38 S., R. 59 W.

Sec. 21 (fractional), all;
Secs. 22 to 27, inclusive, all;
Sec. 28 (fractional), all;
Secs. 33 and 34 (fractional), all;
Secs. 35 and 36, all.

T. 39 S., R. 59 W.

Secs. 1 and 2, all;
Sec. 3 (fractional), all;
Sec. 10 (fractional), all;
Secs. 11 to 14, inclusive, all;
Sec. 15 (fractional), all;
Sec. 19 (fractional), excluding Yellow Bluff Creek;
Sec. 20 (fractional), excluding Native allotment AA-7167 and Meshik River;
Secs. 21 and 22 (fractional), excluding Meshik River;
Secs. 23, 24 and 25, all;
Secs. 26 to 29, inclusive, excluding Meshik River;
Secs. 30 to 33, inclusive, all;
Secs. 34, 35 and 36, excluding Meshik River.

(South Naknek)

Seward Meridian, Alaska

T. 18 S., R. 44 W. (Unsurveyed)

- Sec. 5, that portion west of the left bank of the Naknek River;
- Secs. 6 and 7, all;
- Sec. 8, that portion west of the left bank of the Naknek River;
- Sec. 9, that portion south and east of the left bank of the Naknek River;
- Sec. 10, that portion south of the left bank of the Naknek River excluding ANCSA Sec. 3(e) application AA-25572 Site 2;
- Sec. 12, that portion south of the left bank of the Naknek River;
- Sec. 13, all;
- Sec. 14, that portion south of the left bank of the Naknek River;
- Sec. 15, that portion south and west of the left bank of the Naknek River;
- Sec. 16, that portion south and east of the left bank of the Naknek River;
- Sec. 17, that portion south and west of the left bank of the Naknek River;
- Sec. 18, all;
- Sec. 19, excluding Native allotment AA-6229 Parcel B;
- Secs. 20 to 29, inclusive, all;
- Sec. 30, excluding Native allotment AA-7906 Parcel A;
- Secs. 31 to 36, inclusive, all.

T. 19 S., R. 44 W. (Unsurveyed)

- Secs. 1 to 9, inclusive, all.

T. 17 S., R. 45 W. (Partially Surveyed)

- Sec. 17, that portion south of the left bank of the Naknek River;
- Sec. 18, that portion south of the left bank of the Naknek River excluding Native allotments AA-6609 and AA-6719 Parcel A;
- Sec. 19, excluding Native allotment AA-6609;
- Secs. 20 and 21, those portions south and west of the left bank of the Naknek River;
- Sec. 26, that portion west of the left bank of the Naknek River excluding U.S. Survey 5502, Native allotments AA-6157 Parcel A and AA-7863;
- Sec. 27, that portion south of the left bank of the Naknek River excluding U.S. Survey 5502, Native allotments AA-7862 and AA-7863;
- Secs. 28 and 29, excluding the Naknek River;
- Secs. 30, 31 and 32, all;
- Sec. 33, excluding Native allotment A-067640;
- Sec. 34, excluding Native allotments AA-7862 and AA-7863;
- Sec. 35, that portion south and west of the left bank of the Naknek River excluding U.S. Survey 5502, Native allotments AA-7862 and AA-7863;
- Secs. 36, that portion south of the left bank of the Naknek River.

T. 18 S., R. 45 W. (Unsurveyed)

Secs. 1, 2 and 3, all;
 Sec. 4, excluding Native allotment A-067640;
 Secs. 5 to 12, inclusive, all.

T. 17 S., R. 46 W. (Partially Surveyed)

Secs. 10, 13 and 14, those portions south of the left bank of
 Naknek River;
 Secs. 15, 16 and 17, all;
 Sec. 18, excluding Native allotment AA-6732;
 Secs. 19 to 36, inclusive, all.

T. 18 S., R. 46 W. (Unsurveyed)

Secs. 1 to 12, inclusive, all.

T. 18 S., R. 47 W. (Unsurveyed)

Secs. 1 and 12, all.

T. 17 S., R. 48 W. (Unsurveyed)

Sec. 24 (fractional), excluding Native allotment AA-6285;
 Secs. 25, 26, 34 and 35 (fractional), all;
 Sec. 36, all.

T. 18 S., R. 48 W. (Unsurveyed)

Sec. 2, all;
 Secs. 3, 4, 8 and 9 (fractional), all;
 Secs. 10 and 16, all;
 Secs. 17, 18 and 19 (fractional), all;
 Secs. 20 and 21, all;
 Secs. 28 to 32, inclusive, all.

T. 18 S., R. 49 W. (Unsurveyed)

Secs. 24, 25 and 36 (fractional), all.

Seward Meridian, Alaska (Surveyed)

T. 17 S., R. 44 W.

Sec. 31, Lots 5 to 12 inclusive, E1/2SW1/4, SW1/4SE1/4;
 Sec. 32, Lot 5.

(Ugashik)

Seward Meridian, Alaska (Unsurveyed)

T. 30 S., R. 48 W.

Sec. 26, excluding Ugashik River;
 Sec. 30, excluding Ugashik River;
 Sec. 31, all;
 Sec. 36, excluding Lower Ugashik Lake.

T. 31 S., R. 48 W.

Sec. 2, excluding Lower Ugashik Lake;
 Sec. 3, all;
 Secs. 6 and 7, all;
 Sec. 10, all;
 Sec. 11, excluding Lower Ugashik Lake;
 Sec. 14, excluding Lower Ugashik Lake;
 Secs. 15 to 22, inclusive, all;
 Secs. 23 to 25, inclusive, excluding Lower Ugashik Lake;
 Secs. 26 to 36, inclusive, all.

T. 32 S., R. 48 W.

Secs. 5 to 8, inclusive, all;
 Secs. 17 to 20, inclusive, all.

T. 30 S., R. 49 W.

Sec. 25, excluding Ugashik River;
 Sec. 36, all.

T. 31 S., R. 49 W.

Sec. 1, all;
 Secs. 12 to 36, inclusive, all.

T. 32 S., R. 49 W.

Secs. 1 to 3, inclusive, all.

T. 31 S., R. 50 W.

Sec. 25, all;
 Secs. 26 and 27, excluding Dog Salmon River;
 Sec. 28, all;
 Sec. 29, excluding Ugashik River;
 Sec. 30, all;
 Sec. 31, excluding Dog Salmon River;
 Secs. 32 and 33, all;
 Secs. 34 to 36, inclusive, excluding Dog Salmon River.

Seward Meridian, Alaska (Surveyed)

T. 32 S., R. 48 W.

Sec. 30, excluding Dog Salmon River.

Senator MURKOWSKI. Thank you, Mr. Hession. You have been very helpful, and I appreciate your particular suggestion. Your entire statement will be entered in the record.

Our last witness, Mr. Maitland Sharpe, conservation director of the National Izaak Walton League in Arlington.

Please proceed.

**STATEMENT OF MAITLAND SHARPE, CONSERVATION DIRECTOR,
IZAAK WALTON LEAGUE OF AMERICA**

Mr. SHARPE. I would like to thank the Committee for the opportunity to appear here this morning. I have a written statement that I would like to submit for the record.

Senator MURKOWSKI. It will be entered into the record.

Mr. SHARPE. Thank you. Because the hour is late and the time is short, I will try to focus my testimony on three key points. First, with respect to the sovereignty issue, we believe the Senate bill, S. 1145, is clearly a significant improvement over previous drafts. Compared to H.R. 278, the recently passed House bill, section 21 of the Senate bill provides a much more effective guarantee of neutrality on the sovereignty question.

Section 21 functions as a guarantee of neutrality on sovereignty with respect to both the direct provisions of the Act and the indirect or secondary effects of actions taken under the Act, including transfers of assets to qualified transferee entities. The difference between the Senate bill and the House bill on this point is, in our view, absolutely critical, but the Senate disclaimer is not complete. We believe that the language of section 21 still needs to be strengthened so that it applies equally to administrative as well as judicial decisions.

Second, despite the improvement in the disclaimer provision of section 21, we still hold grave concerns about the potential impacts of this legislation on sovereignty and on the future of the Alaskan land bank. Our fundamental concern is that a pattern of tribal sovereignty in Alaska would fragment the legal authority over fish and wildlife and jeopardize the coordinated scientific management and conservation of Alaska's fish and wildlife resources.

With respect to sovereignty, we believe that this bill sets in motion a chain of events that could lead to native sovereignty or that leads towards native sovereignty by breaching the barriers to sovereignty that were erected by the Settlement Act and by satisfying the conditions for tribal status and Indian country under the Indian Reorganization Act.

We are gratified, as I mentioned, that the Senate sponsors have tried to guarantee that this bill would remain neutral on the sovereignty issue, but we believe that the language currently contained in section 21 falls somewhat short of that goal, and we are also mindful that any bill that emerges from the Senate will have to be reconciled in conference with the House bill that contains a clearly ineffective sovereignty disclaimer.

We are also concerned that this bill would undermine the Alaska land bank. By providing immunities from taxation, adverse possession, and foreclosure outside of the land bank context, this would

effectively eliminate the major incentives for putting native land-holdings into the land bank.

Finally, to address these concerns, we would urge you and the Committee to adopt three amendments to S. 1145. First, we would ask you to strengthen the sovereignty disclaimer of section 21. In order to achieve its intended effect, we believe the disclaimer must apply equally to administrative as well as judicial actions.

Other than direct action by Congress, there are two avenues that lead to sovereignty. One passes through the courts. The other passes through the Department of Interior. The language of section 21 would, in our view, effectively guarantee that these amendments will be neutral with respect to court decisions on sovereignty, but the avenue through the Secretary's office would remain open. Native groups could petition the Secretary for sovereignty through recognition of tribal status and approval of tribal constitutions under the terms of the IRA, basing their petition on tribal ownership of the land base, tax immunities, and other conditions affected as a result of these amendments.

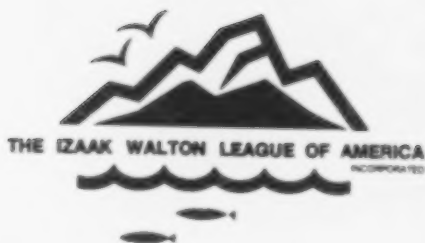
To prevent that from happening, despite the disclaimer in the bill and the intent of the bill's sponsors, we would urge you to add the words "or the Secretary of the Interior" following the words "any court" in subsection (c) of section 21 of your bill.

Second, we would urge you to delete subsection 8 of section 2 which contains the finding that both this legislation and the original Native Claims Settlement Act of 1971 are Indian legislation which as we have heard this morning could serve to undermine the disclaimers contained in section 21.

Third, we would ask you to amend the bill to provide protective immunities for native lands and property—excuse me, to provide the protective immunities for native lands and property being sought in S. 1145 through the vehicle of expanding the Alaska land bank substantially as just explained by Mr. Hession.

Now, in view of the time, I will conclude my testimony at that point. I would be pleased to try to respond to any questions you might have.

[The prepared statement of Mr. Sharpe follows:]



Statement of Haitland Sharpe
 Conservation Director of the
 Izaak Walton League of America

Before the
 The Committee on Energy and Natural Resources

Concerning H.R. 278 and S. 1145
 Bills to Amend the Alaska Native Claims Settlement Act

U.S. Senate

May 19, 1987

Mr. Chairman, my name is Haitland Sharpe; I am the Conservation Director of the Izaak Walton League of America. The Izaak Walton League is a national, membership organization committed to the conservation and wise use of this nation's natural resources. The League has approximately 45,000 members nationwide, of which some 600 reside in Alaska. I am pleased to have this opportunity to appear before you today to convey the League's concern over the potential impacts of S. 1145 on the fish and wildlife resources in the State of Alaska.



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Last July, the delegates to the Izak Walton League's national convention adopted a policy statement expressing grave concerns about the impact of H.R. 4162 on conservation, opposing passage of the bill and calling for more careful consideration of some of the issues raised by the legislation. (A copy of the full resolution is attached.) Today, the House bill bears a new number, and the Senate bill has acquired a new and greatly strengthened sovereignty disclaimer but the fundamental provisions of the bills and the League's objections both remain substantially unchanged. The League's concerns focus on fish and wildlife values, but they are triggered by the issue of sovereignty. We are persuaded that this legislation would substantially strengthen the case for sovereignty, setting the stage for a court ruling or, in the case of S. 1145, an administrative action that could establish native sovereignty in Alaska.

Despite the intention of the sponsors that this legislation remain neutral on the question of sovereignty, we believe these bills would tilt the playing field sharply in favor of those seeking Native sovereignty. We are advised by counsel that, in its current form, both bills would strengthen the basis for pursuing claims of Native sovereignty under the Indian Reorganization Act. They would open the way for Native interests to achieve sovereign status through the courts or before the Department of Interior, even if no additional action were taken by the Congress. In addition, both bills would remove the incentives to make use of the Alaska Land Bank -- an important conservation provision of the Alaska National Interest Land Conservation Act which provides tax exemption for Native lands retained in an undeveloped condition.

Establishment of Native sovereignty in Alaska -- or indeed, incremental steps that would strengthen Native claims to sovereign status -- are of direct concern to the League and other conservation organizations because of the potential impact on fish and wildlife management. A pattern of tribal sovereignty in Alaska would fragment the legal authority over fish and wildlife and jeopardize the coordinated, scientific management and conservation of Alaska's fish and wildlife resources.

The Izak Walton League does not oppose the purpose of this legislation: to provide for continued Native ownership of and control over the Native corporations and the lands conveyed to them under the Alaska Native Claims Settlement Act. However, we believe that these bills could have major, though unintended, impacts on fish and wildlife resources in Alaska. As a result we must oppose the bill in its present form and urge the Committee to amend the bill in ways that will protect both the central purposes of the legislation and the fish and wildlife resources of Alaska.

Our remaining comments address both the sovereignty issue and the Land Bank issue.

THE SOVEREIGNTY ISSUE

We submit that both HR 278 and S. 1145 would advance claims to Native sovereignty under the Indian Reorganization Act by enhancing claims that Alaskan natives are eligible for tribal status and that Settlement Act lands can be converted into Indian Country. As a result, the bills pose unnecessary risks to fish and wildlife resources in Alaska.

Both bills contain disclaimer provisions which are intended by their sponsors to assure neutrality on the question of native sovereignty. In H.R. 278, Section 8 states that these amendments do not affect the scope of Native governmental powers, if they exist. Yet this disclaimer is not effective. It fails to counter two key effects of the bill that together, lead toward sovereignty. First, by permitting the transfer of corporate lands to tribal councils and granting immunity from property taxation, these amendments will enhance claims of tribal status. Second, these amendments establish a method by which lands conveyed under the Settlement Act could be converted into Indian Country. Together, tribal status and Indian Country could be expected to lead to successful assertions of sovereignty under the terms of the Indian Reorganization Act.

S. 1145 contains in Section 21, a far more detailed and vastly more effective disclaimer provision. Section 21 seeks to guarantee neutrality on the sovereignty issue with respect to both the direct provisions of the bill and the indirect effects of actions, such as transfer of lands to tribal entities and grants of tax immunities, taken pursuant to these amendments.

Any legal discussion of sovereignty focuses on two legal concepts -- tribal status and Indian country -- both conditions for the establishment of sovereignty. Tribal status is necessary because it carries the immunities accorded tribes under federal Indian law, 25 C.F.R. 83.2, the most important of which is immunity from any forms of state civil regulation, particularly taxation and the regulation of natural resources. Indian Country is a necessary ingredient for sovereignty because Indian

Country is the jurisdictional land base over which any sovereignty and immunities apply.

Departmental regulations list six criteria for recognition of tribal status: (1) continuous identity as an Indian entity from historical times to the present; (2) a history of dealing with other Indian organizations as an Indian entity; (3) membership which resides in a specific area; (4) continuous assertion of tribal political influence or other authority; (5) identifiable criteria for membership and an identifiable procedure for governing tribal members; and (6) membership composed of Native Americans who are not members of another tribe or a terminated tribe. 25 C.F.R. 83.1 et seq.

The elements of the legal test as to whether lands owned by Alaska Natives are Indian Country are: (1) that they be geographically distinct areas inhabited primarily by Natives; (2) that legal title to the land either be held by the United States or held in fee by the Indian tribe; and (3) that there be federal supervision of the area and of the Alaska Natives living within it. See United States v. McGowan, 303 U.S. 535 (1938); United States v. Martine, 442 F.2d 1022, 1024 (10th Cir. 1971); United States v. Levesque, 681 F.2d 75 (1st Cir. 1982).

We believe the Alaska Native Claims Settlement Act of 1971 affected the conditions for tribal status, Indian Country, and sovereignty, in several respects. It did so primarily through Section 2 of the Act which proscribes creation of: (1) racially defined institutions, rights, privileges or obligations; (2) reservations, wardship and trusteeship; (3)

special categories of property or tax privileges; and (4) special relationships between the state and federal governments with respect to Alaska Natives. In addition, the Settlement Act:

- (1) unilaterally dissolved all reservations except Matlakatla;
- (2) provided for state taxation of Native lands after 1991;
- (3) established taxable corporations to receive Native selected lands, rather than reservations; full title to those lands was conveyed to the corporations, rather than retaining the land in federal ownership in trust for the Natives, as occurs in the case of reservations;
- (4) enrolled Natives as shareholders of transferable stock in Native corporations, rather than giving them racially based tribal membership that would be nontransferable.

The overall scheme of the Settlement Act was to adopt a corporate model and convey lands in fee to the corporations, rather than adopt a reservation model and retain lands in trust. Under the Settlement Act, state regulations over many matters, from timber harvesting practices, to fish and game, to water quality, to health practices, taxation and civil court jurisdiction apply to Native lands.

Key provisions of the proposed 1991 amendments potentially affect the legal consequences of the Settlement Act by establishing numerous immunities, including tax immunity, for Native lands and Native people and by establishing "qualified transfer entities" as racially defined and controlled institutions. Transferring title to the lands now held by the Native corporations to these tribal, "transferee entities" would establish the land base necessary for the existence of Indian Country. Assuming that these entities were tribal councils, they could then apply for tribal

status under Department of Interior regulations, draft constitutions and by-laws under the Indian Reorganization Act, and exercise sovereignty over lands transferred to the entities by the corporations. They would have the necessary combination of tribal status, tribal powers, and Indian Country, notwithstanding the disclaimers in Section 8 of H.R. 278. or Section 21 of S. 1145.

The consequences of tribal status, Indian Country, and sovereignty would be numerous. There could be nearly 200 tribal governments. State civil court jurisdiction could be affected, along with health and safety codes and state and local taxation. State environmental regulations could be pre-empted. State regulation of fish and wildlife harvest and habitat management would be seriously curtailed.

The League's concerns focus on the potential impact of Native sovereignty on Alaska's fish and wildlife resources. Establishment of Native sovereignty in Alaska would fragment jurisdiction over fish and wildlife management within the State. Legal authority to control management of fish and wildlife, set seasons and bag limits, issue licenses, and impose penalties for fish and wildlife violations could be divided among nearly 200 sovereign entities. Such a pattern would undermine the State's ability to implement coordinated, scientific management and conservation of Alaska's fish and wildlife resources and to control abuses of the subsistence taking of fish and wildlife under the Alaska Lands Act (ANILCA). Independent, tribal management of wildlife on Native lands within conservation system units could undermine the public values for which those areas were set aside by Congress. Finally,

competition for limited resources and fragmented management under a system of sovereignty could also be expected to encourage local overharvest of shared, migratory stocks -- with potentially severe consequences for Alaska's anadromous fisheries.

Consider, for example, the situation that might develop along the Yukon River, where perhaps dozens of sovereign villages would find themselves competing for the limited stocks of salmon. Under sovereignty, each village would find it in its own economic self interest to harvest as much of the passing stocks of salmon as it could sell, on the expectation that the other villages would do the same. Any stocks permitted to pass upstream would be subject to taking by other villages: no individual village would benefit from its own actions to conserve the fishery and maintain breeding stocks. The all-too-likely result would be overharvest and depletion of the salmon fishery -- to the long-term detriment of all.

It would, of course, be possible for the many sovereign villages to enter into an overarching contract that would limit the harvest to sustainable levels and allocate the resource among the villages. But such agreements are slow and difficult to negotiate, troublesome to enforce, and easy to abrogate. Even though such a contract would probably be signed eventually, it might come too late to prevent significant damage to the fishery. We believe it would be unwise to subject the fisheries resource and all of the peoples dependent upon it to that risk, by replacing the existing system of state and federal controls with a system demanding coordination among dozens of sovereign entities.

The impact of this bill on claims of tribal status and Indian Country is potentially great. Both the Senate and House bills would alter the conditions that determine the existence of tribal status, Indian country, and therefore, sovereignty. Both bills would set in motion a chain of events leading towards sovereignty. Simply disclaiming any direct effect on the scope of any existing government powers -- as does Section 8 of H.R. 278 -- fails to halt that chain of events. Even the stronger, more comprehensive disclaimer of S. 1145 fails to keep the events the bill sets in motion from leading to the establishment of sovereignty by actions of the Secretary.

THE ALASKA LAND BANK

Section 907 of the Alaska National Interest Lands Conservation Act (ANILCA) provides most of the immunities that are sought by this legislation. It allows Land Bank Agreements whereby Native Corporations can enter into 10-year, non-development agreements with the Secretary and in return receive immunity from local, state, and federal taxation of the property, protection from adverse possession and foreclosure, and assistance in fire protection, trespass control, and resource management.

In return the Secretary receives a covenant that the Native Corporation will not dispose of the land, that the land will be managed compatibly with federal or state lands affected by adjoining Native land, and that the agencies will have access for agency purposes including conservation of fish and wildlife.

The Alaska Federation of Natives has argued that Land Bank agreements are difficult to negotiate. However, the Department has adopted a form Land Bank agreement which requires no negotiating. Section 907 requires the Secretary to accept these form agreements whenever the Native corporation offers the covenant described in the statute and the form. Therefore, section 907 is automatic and self-implementing. The lack of Land Bank agreements to date reflects two facts. First, Native lands are immune from taxation until 1991, and second, section 907 automatically granted to all Native corporations interim benefits of Land Bank protection until the end of 1983 without even requiring an agreement.

The bill does provide two additional protections to Native lands beyond those afforded by Land Bank agreements -- protection from Chapter 11 bankruptcy and protection of lands from the effects of corporate dissolutions. We submit that these protections should be afforded by amending section 907, rather than by eliminating the incentives in the Land Bank agreements and the state, federal, and public benefits achieved by those agreements.

SUMMARY

In conclusion, our position is that both H.R. 278 and S. 1145 set in motion a chain of events that leads toward the establishment of Native sovereignty in Alaska. We understand that these bills do not expressly grant sovereignty. But we also understand that they breach the legal barriers to sovereignty erected by the Settlement Act and greatly strengthen the case for sovereign status under the Indian Reorganization

Act. In our view, these bills constitute a clear invitation to sovereignty. Each bill is, in effect, a grant of eligibility for Native sovereignty -- a grant that could be pursued through office of the Secretary of the Interior, and under the House bill through the courts as well.

Because sovereignty could fragment fish and wildlife management and encourage overharvest, we find that these bills pose unnecessary and unacceptable risks to fish and wildlife resources in Alaska. This is so despite the intentions of the sponsors and despite the disclaimers in the bills. As we have shown, these bills lead toward sovereignty indirectly by satisfying the conditions for Indian Country and tribal status under the Indian Reorganization Act, rather than through the expansion of the scope of existing Native governmental powers or by a direct grant of sovereign status. The disclaimer in Section 8 of the House Bill fails to prevent the bill from leading to sovereignty indirectly, through the establishment of Indian country. Section 21 of the Senate bill fails to prevent the bill from leading to sovereignty through decisions of the Secretary. The disclaimers in both bills are therefore insufficient to fully divorce this legislation from the sovereignty issue or to lay to rest our concerns that Native sovereignty would be the indirect result of these bills.

RECOMMENDATIONS

Last year, testifying before this Committee, we recommended a comprehensive package of amendments designed to retain and strengthen the incentives for the use of the Land Bank and to ensure that the bill would

not enhance claims to Native sovereignty. We still believe that those amendments would offer the best, most reliable guarantee against unintended impacts of this legislation and we would be pleased to have an opportunity to discuss those amendments with the Committee staff and with proponents of this bill. However, we realize that the Committee may not wish to reopen the bill to that extent. In that event, we would urge you to take four specific actions to address our concerns and to improve S. 1145.

First, we would urge you to adopt a strengthened version of the sovereignty disclaimer contained in Section 21 of S. 1145. Section 21 was drafted to ensure that the 1991 legislation would be completely neutral in its effects on sovereignty. In this, the goal of Section 21 is the same as the goal of Section 8 of H.R. 278. However, in our view, Section 21 provides a much more effective guarantee of neutrality on the sovereignty question. There are two basic reasons. First, Section 21 is far more explicit and detailed; it leaves less room for ambiguities and differences of interpretation. Second, Section 21 functions as a guarantee of neutrality on sovereignty with respect to both the direct provisions of the Act and the indirect or secondary effects of actions taken under the Act, including transfers of assets to qualified transferee entities and changes in land ownership. In other words, Section 21 is designed to make it clear that these amendments can not be construed to establish sovereignty nor to foster, promote, or set in motion events that lead to sovereignty. They are to be, quite simply, without effect on the sovereignty question.

However, in order to achieve that intended effect, we believe the language of Section 21 must be strengthened to make the disclaimer apply

equally to administrative as well as judicial actions. Other than direct action by Congress, there are two avenues that lead to sovereignty. One lies through the courts; the other lies through the Department of Interior. The language of Section 21 would effectively guarantee that these amendments will be neutral with respect to court decisions on sovereignty. But the avenue through the Secretary's office would remain open. Native groups could petition the Secretary for sovereignty -- through recognition of tribal status and approval of tribal constitutions under the terms of the Indian Reorganization Act -- basing their petition on tribal ownership of the land base, tax immunities, and other conditions effected as a result of these amendments. To prevent that from happening, despite the disclaimer in the bill and the intent of the bill's sponsors, we would urge you to add the words "or the Secretary of the Interior" following the words "...any Court..." in Subsection c of Section 21.

Second, we would urge you to delete Subsection (8) of Section 2 which contains the finding that both this legislation and the original Alaska Native Claims Settlement Act of 1971 are "Indian Legislation." Designating ANCSA or these amendments as Indian Legislation would invoke the judicial guideline that ambiguities in the legislation are to be resolved in favor of the Natives. ANCSA is currently codified as public land legislation, under Title 43. We believe these are compelling reasons to retain that designation. ANCSA is a complex and wide-ranging statute -- covering questions of land withdrawals from the public domain, park and refuge designations, state selections and the Alaska Statehood Act, the National Petroleum Reserve, tax law, and public land law as well as issues of native claims. Application of the ambiguities guideline to the broad array of

legal questions under ANCSA is a matter best left for the courts to decide on a case-by-case basis. In addition, designating ANSCA as Indian Legislation could create new grounds for claims of sovereignty. It would invite arguments that if sovereignty was not expressly prohibited by ANCSA it was left ambiguous and can therefore be inferred by the courts or the Secretary, under the ambiguities guideline.

Third, we would ask you to include in the legislative history a clear, crisp statement in simple English that the intent of the sovereignty disclaimer is to prevent these amendments, any conditions they create, or any events they set in motion from being construed by the Secretary of the Interior or by the courts as having any effect on questions of sovereignty. In our view, the legislative history should state that these amendments neither open nor close any avenues to sovereignty, and that no action taken pursuant to them shall be used as evidence for or against tribal status, Indian Country, or other conditions for sovereignty.

Finally, we would ask you to amend the bill to provide the protective immunities for Native lands and property being sought in this legislation, through the vehicle of an expanded ANILCA Land Bank. This would entail adding new immunities against the loss of land through involuntary dissolution of the Native corporations and against bankruptcy or insolvency to the three already provided through the Land Bank: immunity against real property taxation, loss to creditors, and adverse possession. That action would retain and strengthen the existing incentives for participating in the Land Bank. At the same time it would provide the Alaska Native community with the ability to protect their lands against dissolution of

the corporations and bankruptcy or creditor proceedings. The public's grant of tax exemption and other immunities would be balanced by the public benefits derived from protecting federal lands from incompatible development on adjacent Native holdings. Finally, strengthening the Land Bank, would help perpetuate the undisturbed fish and wildlife habitats that form the basis for Native subsistence economies.

We believe that these amendments -- sharpening the language of the Sovereignty disclaimer, removing the designation of ANSCA and these amendments as Indian Legislation, and strengthening the Land Bank, -- offer an equitable means of accomplishing the central purposes of this bill while minimizing the risks that the legislation will lead to the establishment of Native sovereignty or that it will undermine the Land Bank provisions of ANILCA.

We thank you for the opportunity to appear here to present these views.

AMENDMENTS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), which extinguished all aboriginal claims and titles of the Indians, Aleuts, and Eskimos native to Alaska. In exchange, the Natives received \$962 million and 40 million acres of selected lands, which were to be held and managed by Native regional and village corporations for the benefit of their shareholders. In enacting ANCSA, Congress refrained from establishing reservations, tribal governments, or a trustee relationship with the federal government -- establishing a new system of corporate, rather than tribal, institutions.

Today, legislation to amend ANCSA is pending before Congress. The announced purpose of this legislation is to insure that the lands and assets of the Native corporations remain in Native ownership and control. To that end, pending bills, S. 2065 and H.R. 4162, would extend indefinitely the current prohibitions against sale or transfer of stock in the Native corporations.

Those provisions appear to be equitable and in keeping with the original purpose of ANCSA, they are not expected to have any significant effect on the conservation and use of Alaska lands and resources. However, other provisions of the pending legislation which could materially strengthen the legal basis for assertions of native sovereignty, hold very significant implications for resource conservation and management in Alaska.

The Izaak Walton League of America, assembled in convention in French Lick, Indiana, July 7-10, 1986, finds that establishment of tribal sovereignty in Alaska would fragment the legal authority over fish and wildlife management within the state. Dividing the legal authority to control management of fish and wildlife, set seasons and bag limits, issue licenses, and impose civil and criminal penalties with respect to fish and wildlife among scores of separate sovereign entities, would jeopardize the coordinated scientific management and conservation of Alaska's fish and wildlife resources.

The Izaak Walton League therefore urges Congress to reject any amendments to the Alaska Native Claims Settlement Act or other statutes, that would in any way strengthen or advance native claims to sovereign status. The League does not oppose the central purpose of the pending legislation: to provide for continued Native ownership of and control over the Native corporations and the lands conveyed to them under the ANCSA. However, the League does strenuously oppose several provisions, found in Sections 7, 8, and 10 of the bills as introduced, that are not germane to the basic purposes of the legislation and that would advance legal arguments for the existence of Native tribal sovereignty. We call upon Congress to delete those provisions

from the bills, or to add language sufficient to prevent the legislation from in any way furthering claims of Native sovereignty. The League further urges the Congress to reject the proposed tax exemption for undeveloped lands owned by Native corporations (Section 10) in that it would merely duplicate the function of the Alaska Land Bank provision of the Alaska National Interest Lands Act without the degree of conservation protection afforded under the Land Bank agreements. Finally, the League finds that the issues connected with tribal sovereignty in Alaska are of such weight and complexity that they should be dealt with directly and openly, through separate legislation, and following full public debate.

Senator MURKOWSKI. Thank you, Mr. Sharpe. I noted in your testimony while you did not expressly give it the way it was written, that asked to include in the legislative history a clear, crisp statement in simple English that the intent of sovereignty disclaimers to prevent these amendments any conditions that accrued or any events they set in motion from being construed by the Secretary of the Interior or by the courts as having any effect on questions of sovereignty.

Mr. SHARPE. That is correct.

Senator MURKOWSKI. And I think that has been our intent as well. I guess perhaps we have fallen down on the simple English reference.

Mr. SHARPE. I understand and appreciate that that is your intent.

Senator MURKOWSKI. We try to do the best we can. Let me ask this and either one of you may answer. Do you know what the negotiated land bank experiments that I think Mr. Hession referred to have cost the corporations in legal fees? It is my understanding some have been working two and a half years. It is a little more than the Alaska Legal Services, I think, could underwrite. The costs have been extraordinarily high. I think this is part of the problem, is it not?

Mr. HESSION. Yes, Mr. Chairman. I do not know how much these agreements have cost the respective corporations. I am sure that that information is available, however. I would say, though, that as a result of this experience to date the Fish and Wildlife service has attempted to come up with a streamlined or model land bank agreement that is designed to avoid as much as possible the cost of lengthy negotiations.

As I tried to indicate, we are in the early stages of this experiment, and I think it is a valuable one from the point of view of the State and National conservation interests as well as the Alaska native community, and that it would be premature to abandon it at this stage simply because there are some early difficulties in working out these initial agreements. I would hope that the Subcommittee would address itself to the question of how it can facilitate future land bank agreements, and further the process.

Senator MURKOWSKI. Let me ask one more question. What is the necessity of the corporations having to go through the agreement process when the automatic land bank under section 13 accomplishes the same result?

Mr. HESSION. It does not quite accomplish the same result, Senator, if I may respectfully differ with you there. The essence of the land bank is, as I say in my written statement, a quid pro quo. In return for these various immunities, tax and otherwise, granted to the native corporation, the State and National Public achieve the benefits of cooperative and compatible management, and we believe this is a truly valuable benefit for the public, in return for an extensive, sweeping grant of immunities that no other group or individuals in our society have. We think it is only reasonable to expect something in return for these very, very important benefits.

I might add as well that the whole intent of the bank initially was to promote the retention in native ownership of native lands through the deposits in the bank itself, and again, we are off to a

reasonable start here, and I think it would be premature to cut it short at this time.

Senator MURKOWSKI. I think that pretty well concludes my questioning. I want to thank you, Jack Hession, and Maitland Sharpe. We appreciate your constructive input into the hearing record, and know that you share with us the broad divergence of opinions that are associated with this legislation. I want to thank a number of people, obviously all our witnesses, and those who have been kind enough to sit through the entire hearing this morning and those that have covered for the media.

I want to thank on my right Tom Williams, Tony Bevineto, on the minority side Tom Roberts and myself, my own staff, and, of course, Senator Bumpers as well, who is the Subcommittee Chairman, and I think we have compiled a record this morning that reflects on the concerns that are perhaps broadening as the debate on 1991 continues. The delegation, Senator Stevens, myself, and Don Young, will be reflecting on the record, which will remain open for two weeks until June 2nd. I would advise you to send any testimony to the Senate Committee on Energy and Natural Resources in care of Mr. Tom Williams, and it will be entered into the record of this hearing, and again, I thank you very much for your participation.

I think we have today taken another step forward in our efforts to meet the challenge that is before us, and that is the fact that 1991 is going to come regardless of the deliberations that occur and the merits of the arguments concerning aspect of the bill, and it behooves us in government to meet our obligation of attempting to address the benefit of all Alaskans this matter of 1991 and the interest in protecting the native people of Alaska and the land asset that they received as a consequence of the settlement.

I think the input expressed here today by the Alaska Federation of Natives, the Coalition of Alaskans, and others is expressive and gives us all a better understanding of the particular points of view and the obligation that those of us who are going to have to mediate these matters as some type of compromise, consensus, perhaps humbles us all in recognizing the obligation ahead of us and the fact that the task is not going to be necessary an easy one. We would continue to request your input as we proceed towards a mutually desirable goal, and that is what is in the best interest of Alaska's native community and our State of Alaska as a whole.

With that, I would again thank you all and wish you a good day and hope that you will be with us tonight about 5:30 in our office for an opportunity to shake hands and get to know one another a little better. Thank you, and good day. The hearing is concluded.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

TESTIMONY OF DANIEL ALEX

FOR S 1145

BEFORE THE

PUBLIC LANDS, NATIONAL PARKS AND FORESTS SUBCOMMITTEE

OF THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. Chairman and members of the Senate Energy Committee, my name is Daniel Alex. I am an Alaska Native Shareholder of Cook Inlet Region Inc. (CIRI) and of Eklutna Village.

I have been before you and have testified for Alaska legislation in the past.

I worked on titles of the Alaska National Interest Lands Act of 1980. My organization, the Alaska Native Land Managers Association in concert with the Alaska Federation of Natives (AFN) worked on amendments to the Alaska Native Claims Act of 1971. We worked on issues of common concern and common application.

In 1982 my organization separated from AFN because AFN was representing a special interest point of view, that of the Regional Corporation members who were seeking legislation which would take rights from the villages without their consent or cooperation. That issue has been buried in versions of the 1991 bill as "the agreement of June 29, 1982." For the knowledgeable that document is a highly complex document which was agreed to by the Regional Corporation without consultation or consent of the villages. This is but one issue that is of concern.

I believe that there are many parts of the proposed legislation that are both desirable and necessary, but I see no need to rush the legislation.

The proposed bill has several objectives and some of them are not nice. I worked to stop the 1991 initiative last year because of my belief. Most of my people are not sophisticated lawyers or accountants or experts in interpreting proposed law. There are some sly, despicable people who have an agenda which is not so hidden any more.

The bill contains provisions which are meant to appeal to the masses of our native people, and that part is fine. I believe and trust our people in that regard. Who I don't trust are the proponents of the hidden agenda, and I think I know who some of them are.

Whenever there exists a situation where relatively innocent, ignorant people have large amounts of assets, there come the greedy people who would take those assets.

In the bill is hidden the plan which would allow people who have the knowledge to use the vehicle in the bill to take the assets away.

The stock provision allows the issuance of new stock which can be secured by a promissory note of particularly questionable value and a valuation set by a board without regard to the value of the assets and set by a board without judicial review.

There is a prohibition of issuance of stock to a group exclusively non-shareholders, but that prohibition can disappear if you add a few stockholders to the group.

There is a provision in the house version which presents challenges of unconstitutionality and that is there for the good provision as well as the bad. I think it is there for the protection of the hidden agenda proponents.

There is another issue which needs another point of view, and that is the SEC exemptions. Had any of us native leaders seen the potential for abuse, we would have objected to the 1976 amendment which dealt with the SEC exemption.

I think that the SEC oversight is necessary for the Regional Corporations. I think that most of the village at this time would have a difficult time complying with SEC Regs. I think that there is a dollar amount trigger that once exceeded by the village, it would also have to comply.

Currently we need SEC protection for our stockholders of the Regional Corporations. Some of them, I believe, are involved in misrepresentation of their financial conditions with malice of forethought.

I am pursuing the exposure of this matter. I think that this is a current abuse of the SEC exemption. I think this matter needs full investigation. I believe this abuse constitutes fraud and deserves attention and prosecution.

I think that the 1991 initiative should be put on hold and that a general oversight hearing be scheduled to hear the rest of the issues which involve our people.

I request your consideration for the issues I have raised and am willing to help as necessary.

TESTIMONY OF NELSON ANGAPAK
PRESIDENT, CALISTA CORPORATION
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER & RESOURCES CONSERVATION
U.S. SENATE
REGARDING S. 1145

Mr. Chairman and Members of the Committee, my name is Nelson Angapak. I am President of Calista Corporation, an Alaskan Native regional corporation created under the Alaska Native Claims Settlement Act of 1971. Calista is the second largest Alaska Native regional corporation, both in terms of geography and Native population.

Mr. Chairman, at the outset, please allow me to express my personal gratitude to you for having this hearing. This is a crucial part of the legislative process which we trust will lead to passage of this proposal. I also want to thank Senator Murkowski and Senator Stevens for sponsoring S. 1145. We look forward to working with you and other Members of this Committee to secure final passage.

Mr. Chairman and Members of the Committee, in order to understand the significance of the legislation presently pending, it is essential to have some understanding of the basic law which

we seek to amend. At the risk of boring those of you who have dealt with the Alaska Native Claims Settlement Act before, but in hopes of enlightening those of you who have not had that opportunity, please allow me to examine a bit of the background.

The Alaska Native Claims Settlement Act ("ANCSA"), P.L. 92-203, was enacted in 1971. The purpose of that Act was to effect a "fair and just settlement of all claims of Natives and Native groups of Alaska based on aboriginal land claims; . . ." There were several schools of thought with regard to this legislation at that time. Generally speaking, one group desired to effect the compensation for the aboriginal claims, as had been done with the American Indians in the lower 48 states, i.e., by creating a reservation system and paying compensation for the aboriginal claims; another group desired to simply set aside a small area of land for each Native village and compensate the Natives for their aboriginal claims by the payment of fairly substantial sums of money into trust accounts to be managed by New York investment firms; and finally, a third group (including the Alaska Natives themselves) wanted to avoid the old system of reservations, as well as the paternalism encompassed in the investment of their compensation and its management by others. This group opted for a new approach in which the Alaska Natives would control their own destiny by controlling the land and the monetary compensation given in return for the aboriginal claims.

A system unique to Alaska Natives -- the corporate system -- was chosen as the method of controlling the land and the compensation received. Each Alaska Native village of a certain size was given the surface ownership of certain lands upon which the village was located and surrounding the village. The State of Alaska was divided into 12 regions which generally preserved ethnic distinctions. Corporations were created within each of these regions. These corporations were given the ownership of the sub-surface estate in the lands held by the villages, as well as additional surface and sub-surface estate in other lands. Each Native (as defined in the Act) in existence at the passage of the Act was entitled to shared in both his village corporation and the regional corporation in which the village was located. (Some limited exceptions and distinctions were created.)

Monetary compensation for the extinguishment of aboriginal title was divided among the Native regions and villages, primarily on the basis of population.

Stock in both village and regional corporations was to remain inalienable for 20 years after the enactment of ANCSA. At the time ANCSA was enacted, Congress thought that 20 years would be sufficient time for Alaska Natives to turn the village and regional corporations into viable economic entities. This belief was based on certain assumptions, set forth in declaration of policy contained in the Act itself. That declaration of purpose

stated in part (b) "the settlement should be accomplished rapidly with certainly in conformity with real economic and social needs of Natives without litigation, with maximum participation by Natives in decisions affecting their rights and proper property, . . . " (Emphasis added).

Many have testified to what the Members of this Committee already know. The settlement has not been accomplished "rapidly, with certainty . . . without litigation." Today, only approximately 80% of lands selected by village corporations in our region has in fact been conveyed by interim conveyance. The promise and high hopes created by ANCSA have not been achieved in the time frame originally envisioned by sponsors of the legislation.

The only "certainty" regarding matters affecting the Alaska Natives Claims Settlement Act is that it is certain that Natives have had to, and are likely to continue to, litigate to obtain favorable interpretations of most of the provisions of the ANCSA. Rather than interpret that law favorably to Alaska Natives, as Congress intended and everyone expected, most of the bureaus, agencies and commissions have interpreted provisions of the ANCSA against the Alaska Natives. By conservative estimate, funds spent for litigation as of the present time by Alaska Natives in attempting to realize the beneficial provisions of the Alaska Native Claims Settlement Act have totaled in tens of millions.

Delay, uncertainty, and unexpected litigation created some of the problems with implementing ANCSA. Another implementation problem was related to a different factor -- the reverence of the Alaska Natives for the land. Few in Congress recognized the full extent of the great affinity the Alaska Natives have with their land, and few recognized that this affinity would be the same 20 years after the passage of ANCSA as it was 20 years before the passage of that Act.

In many ways, the creation of the corporate structure as the "new" solution to the problem of Native rights and claims was an attempt to use a non-Native mechanism for solving a Native problem. What should have been anticipated (but was not) was that imposing such a solution would create some problems wherein the two concepts were not a perfect fit. The primary area would be in the non-Native concept of stock and its changeability and in the Native reverence for land. Control of the stock meant control of the corporation's assets -- primarily its land. To the Native, land is not an asset to be sold and traded; it is the very foundation of his existence, his way of life. The premise of ANCSA was a recognition and preservation of that way of life. It would be the height of irony if the good intentions of the creators of the corporation solution would now be converted into the very vehicle that is used to take the land away from Native corporations.

Since the enactment of ANCSA, some of the Native corporations have done very well. Others have not done nearly as well, and still others have done poorly. Uncertainty, delay and litigation have resulted in many of the Native corporations not being able to function as yet on a straight economic basis in the corporate world. Because of the affinity of Alaska Natives for the land, some Native corporations will never wish to function totally in the economic corporate world. For that reason, we favor a provision in the proposed legislation which would automatically extend the restrictions on alienation of stock by Native share- holders, but which would allow stock to become alienable if the shareholders vote to remove the restriction. While the House bill, H.R.278, contains such a provision, the Senate bill S. 1145 does not. We strongly favor the House bill in this respect.

The intent of ANCSA was to assure Native Alaskans reasonable control over their future. Permitting Native shareholders to decide if and when their stock will be alienated is certainly in keeping with the intent and the spirit of ANCSA.

The House provision is crafted in a way that serves the best interest of all Alaska Natives and all others. It permits the shareholders of corporations who wish to function totally in the economic corporate world to do so by a vote of their shareholders. Yet it allows those who do not wish to depart radically from their rural, often subsistence-based traditions to

retain the control of their corporations and, hence, control of their land and culture.

Some have suggested the extension of the provision against alienation should not be automatic. Rather, they suggest, the stock should become alienable in 1991 in the absence of a vote by the shareholders to the contrary. Others make a distinction between village and regional corporations. They would allow an automatic extension against alienation for village corporations but require an affirmative vote by regional corporations.

Mr. Chairman, these distinctions are counterproductive.

First, the overwhelming majority of shareholders -- regional and village -- do not wish their stock to be alienable. In regions such as my own, most of the regional corporation stockholders are enrolled in villages within the region. As such they are also village shareholders. Requiring them to vote affirmatively for something which all agree they prefer is to require expensive, time consuming and unnecessary elections. Rather the burden should be on those who would change the status quo.

The prime rationale for making the stock inalienable in the first instance was to allow the Natives to manage their own affairs and protect their lands. That rationale has not changed, nor is there a difference between regional and village

corporations in this regard. To protect the village corporation lands but not the regional corporation lands is to protect less than half. The regional corporations hold the subsurface estate to all village lands. Anything which subjects the regional corporations to outside control jeopardizes the village lands as well as the regional lands.

Indeed, Mr. Chairman, the regional corporations are in even greater jeopardy from hostile takeovers than are a vast majority of the village corporations. The subsurface estate is where most of the resources are located. Resources will be the primary goal of takeover artists. If anything, the regional corporations should be afforded even more protection against hostile takeover than the village corporations.

It is not my intention to dwell on all of the provisions of the bill, but please allow me to discuss with a little more specificity a few of them:

* We in Calista are strongly supportive of the provisions that add Natives born after December 18, 1971, as shareholders. Under the present provisions of ANCSA, two classes of Native citizens have been created: one class with stock and one without. The purpose of ANCSA was to compensate for the loss of aboriginal rights. All descendants of the original Alaska Natives who establish

those rights should be entitled to share the compensation for the taking of the rights. So long as Alaska Native blood courses through the veins of descendants, those descendants should share in the award.

* Some contend that provisions of the bill which entitle Natives born after 1971 to stock in the same proportion as those born before, cause an unacceptable dilution of existing shares. We recognize the bill as written causes dilution. Whether that is unacceptable however, should be left to the Native people themselves. We do not contend that proposals such as intra-family gifts and others lack merit. But they should be options rather than mandated by the legislation. We are prepared to consider proposals on this section but let us not lose sight of the basic thrust which is to prevent two classes of Alaska Natives.

* We agree with the provisions allowing dissenters rights. But we also agree that those rights can be restricted. Alaska Natives corporations are not corporations in the strict economic, legal and business sense. As they have evolved, they are essentially Native American organizations which have different values and priorities than the strictly monetary, legal and business corporations. A handful of dissenters should not be allowed to frustrate those purposes

which, to many stockholders, are more important than the profit-making potential of the corporation.

* We support provisions which preserve the legal status quo on the sovereignty issue.

Some say the legislation as written is not "sovereignty neutral." We do not agree, but we do not oppose the addition of language which buttresses the "sovereignty neutral" character of the bill. What we do oppose is the addition of any language which tips the scales against the status quo. Questions of governmental powers among Native Americans is an issue that affects all Native Americans -- those in the lower 49 states as well as Alaska Natives. In contrast, S. 1145 is a bill that affects only Alaska Natives. The issue of sovereignty should be resolved in a nationwide context rather than the narrow confines of the future of Alaska Native regional corporations.

You may wonder why we are before you today urging passage of legislation which deals with 1991. Why, you may ask, do we need to consider this issue now? Perhaps I can answer your inquiry by relating my own experience. I have been involved with Alaska Natives for more than twenty years. I have been active in Calista Corporation since its inception in 1972. I travel our region constantly. But even I have only been to 45 of our 56 villages. Time, distance, and communication among native people

in our region -- and many other parts of Alaska -- defy understanding by non-Alaskans. We must proceed swiftly or time will overtake us.

Mr. Chairman, this proposal must not be viewed only through the flinty eyes of corporate legal council. The corporate frame has been used to provide a unique response to a uniquely Alaska problem -- within these corporate frames reside the hearts and souls of Alaska Natives. Form should not be allowed to prevail over substance. The essence of this proposal is that it assures the protection of the land for those who wish it; yet it allows those who chose a different course to follow it. This proposal allows those choices without doing violence to Alaska or federal law. We urge its adoption.


ALASKA OUTDOOR COUNCIL, INC.

 3780 MCGINNIS DR. JUNEAU, AK 99801
 (907) 789-3450

JUN -4 FF

May 31, 1987

 Senator Frank Murkowski
 United States Senate
 709 Hart Building
 Washington, D.C. 20510

Dear Senator Murkowski:

As the Alaska Outdoor Council was unable to send a representative to the hearing on S.1145 concerning amendments to ANCSA, I am sending our comments in hopes that they can be considered and entered into the hearing record.

For the record, the Alaska Outdoor Council is the largest conservation and outdoor user advocate organization in the State. Our membership is well over 10,000 with 46 affiliated clubs and organizations. Most importantly, we are an Alaskan organization and not an extension chapter of some national organization.

The Alaska Outdoor Council has consistently stated that we support technical amendments to ANCSA which provide the fair and equitable settlement that the original Act intended. Certainly, the continued and expensive delays in land transfers coupled with endless litigation has provided true cause for Native community complaints.

We can also support a reasonable extension of the "alienation of stock" provision and tax exemption, as long as it meets some of our other concerns which I will summarize.

We have reviewed the testimony of some of the major parties and would like to generally endorse the comments of the Secretary of Interior and our Governor Steve Cowper. Both have extended a willing hand to assist in developing compromise legislation which meets the intent of the original Act while protecting the rights of the individual, the citizens of Alaska and the national interests.

We agree that S.1145 is far superior to HR 279 which passed the House of Representatives this year. We are hopeful that the Senate will work with the provisions of S.1145 as it attempts to develop a reasonable solution to some legitimate Native concerns. While the Alaska Outdoor Council was a consistent participant when this legislation was marked up last year, we still have major concerns with the bill as written.

Affiliated with National Rifle Association

Despite the improved "disclaimer" provision in S.1145, we are still concerned that there are severe conflicts built into the amendments which will give rise to federal court rulings favorable to "sovereignty" claims of the villages. Our points can be summarized as follows:

1. Permanent tax exemptions and exclusive ownership through stock alienation are the major cornerstones for court interpretations on sovereignty cases. This point has been continuously emphasized by Native attorneys examining the legal situation for sovereignty claims in Alaska.
2. The allowed transfer of assets to "qualified transferee entities" is unquestionably designed to provide a basis for the creation of tribal authorities with control over land and other assets. We oppose this section unless some mechanisms can be built in to guarantee that this will not create conflicts with the existing State constitution.
3. Like the Secretary of Interior, we oppose that portion of Section 2 which establishes this legislation and ANCSA as "Indian Law". This provision may well negate the intent of a disclaimer section because of the built-in conflicts with other sections of the bill.
4. Provisions which virtually eliminate the rights of the individual stockholder allow for an expansion of "assets held in common" assertions that provide additional emphasis for tribal sovereignty rulings.

The Alaska Outdoor Council continues to support the basic intent of ANCSA and also supports the concept that the corporate structure and provisions be consistent with State law which we feel provides reasonable protection from hostile sources. We certainly concur that some mechanism should be available to the Native community to protect their lands and corporate assets from "outside" takeovers and we believe some of the options offered by the Secretary should be evaluated. We also encourage that all rights and privileges be consistent with the State Constitution and are not exclusively racially structured.

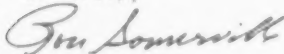
In closing, we would like to express our major concern and that is this legislation not "recreate racially defined institutions" which were supposedly eliminated with the passage of ANCSA. We are hopeful that any finalized legislation on ANCSA amendments provide a virtual guarantee that the courts cannot use these modifications as stepping stones to sovereignty declarations for Alaskan villages or tribal entities.

We are also concerned that the settlement be eventually concluded and not be a perpetual settlement forever dividing Alaskans racially.

The Alaska Outdoor Council is again willing to participate in any negotiations to help develop an acceptable compromise which will meet the legitimate concerns of the Native community. We are also hopeful that our concerns can be considered as the final amendment package is put together.

Thank you for considering these comments and entering them into the record.

Sincerely,



Ron Somerville
Executive Director

cc: Senator Stevens
Representative Young
Governor Cowper
Secretary Hodel

AFM 247



TESTIMONY
ON BEHALF OF
CHUGACH ALASKA CORPORATION
ON S. 1145 AND H.R. 278
FOR THE
SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

June 3, 1987



Mr. Chairman and members of the Subcommittee,

Chugach Alaska Corporation is pleased to have this opportunity to impart to you our concerns regarding the "1991" amendments before you. Chugach is a small regional corporation with less than 2,000 shareholders. We are Chugach Eskimo descendants, Aleut, and Indian. The Chugach Region encompasses Prince William Sound in Southcentral Alaska, including the communities of Seward, Valdez, and Cordova, and the villages of English Bay, Port Graham, Chenega, Eyak, and Tatitlek. Our shareholders are largely located in urban environments, but there exist within our region shareholders who enjoy a more traditional lifestyle. As you can see, while we are a varied group, we share one overriding and unifying concern: protection of our land.

In 1971, with the passage of ANCSA, the people of the Chugach Region held on to the promise of land ownership. The traditional Native lands of Prince William Sound and surrounding areas were largely encompassed in National Forest and other reserves, and the land settlement promised in 1971 was not realized until late in 1982. The spectre of 1991 looms before us, and we are afraid. The land, so recently returned to Chugach ownership, may slip away again. CAC recognizes our only protection for continued Native control is passage of the "1991" amendments, and for that reason we endorse the amendments as presented by the Alaska Federation of Natives.

Chugach will take this opportunity to identify those issues of particular concern to our region.



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Stock restrictions to remain in place until the shareholders of Chugach vote to remove them. We strongly endorse this so-called "opt-out" approach to stock restrictions. For the same reasons that village corporations are allowed the "opt-out" approach in the Senate amendment, we would need this provision for our regional corporation. Chugach has limited economic resources at this time, and while we may have great potential natural resources, the reality is such that we have barely scratched the surface in natural resource development and exploration. As we struggle to develop economically, we cannot expect to adequately provide information to our shareholders regarding the real value of CAC stock without incurring the enormous hardship of accounting and legal expenses. The burden of a mandatory regional vote, before we feel adequately prepared for such a vote, could conceivably dominate all of our limited staff time, and bring much of our business to a halt. Due to the profound and irreversible consequences of such a vote, we feel our shareholders must have the opportunity to fully understand the facts as they relate to Chugach.

Dissenters' rights to be optional. At the present time, or near foreseeable future, Chugach would not have the cash required to pay its dissenters.

Automatic Land Bank protections. CAC endorses this section with the exception of a tax recapture provision of subdivided



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land. Potential real estate development should not be singled out for exclusion from tax immunities. The recapture provision only serves to thwart our ability to develop land with a commercial base on which we would then pay appropriate taxes.

State's power to condemn. Located in our region is a village corporation which has run into considerable difficulties regarding condemnation by the State. The Eyak Corporation is located within the municipality of Cordova. A two mile "Buffer" around the city was established when Eyak made its land selections which prohibited selection within that boundary. Among the lands selected by Eyak, were small potential hydroelectric sites, some with historical hydroelectric use. The problem which has arisen is the local rural electric cooperative has moved to condemn one site, and is studying additional potential sites. While fair market value considerations enter the picture, Eyak's main concern is that other avenues of resolution besides condemnation were rejected, such as long-term leasing. It is felt that tightening the States requirements for "public use" would help, allowing condemnation to be more of a "last resort" option, and serve to better protect ANCSA lands.

Mr. Chairman, we give particular emphasis to these provisions but do not limit our concerns to them. Like the rest of the entire Native community, we are not comfortable with disclaimer language that is anything but strictly neutral on the subject of sovereignty.



- 4 -

Our most pressing concern is to see 1991 legislation this year. We have a great deal of field work to do once the options available to our shareholders are known. We must allow time for testing in the courts the provisions of the amendment, which may take place. The education and disclosure process will require numerous meetings, personal contact and a great deal of staff time and expense. Chugach shareholders must make a deliberate, and informed decision regarding their future and that of their inheritors. We need the guidance of specific legislation to frame our planning process, and the time is now.

Respectfully submitted on behalf of Chugach Alaska Corporation
Board of Directors,
Gene Kompkoff, Chairman
Sylvia Lange, Committee Chairman, 1991



May 21, 1987

The Honorable Dele Bumpers
United States Senate
Chairman
Committee on Public Lands, Reserved Water
and Resource Conservation
Washington, DC 20510

Reference: Alaska Native Claims Settlement Act

Dear Senator Bumpers:

I am writing to you concerning the proposed legislation to amend the Alaska Native Claims Settlement Act to provide for certain options concerning ownership of land and corporate shares. (H.R. 278 and S. 1145).

As you may be aware, there are disagreements among village and regional corporations as to ownership and use rights of sand and gravel and as to the extent of the requirement for a village corporation to consent to the exploration, development or removal of minerals by a regional corporation.

EKLUTNA, INC. recognizes as a practical matter that these issues will not be resolved by legislation unless there is agreement first among the regions and villages. At this time there is no such agreement. therefore, EKLUTNA, INC. supports the following:

1. The deletion of Section 13 in last year's Senate Bill. and
2. the deletion of all references to the agreement dated June 29, 1982, among and between the parties to ALEUT CORPORATION et al. against ARCTIC SLOPE REGIONAL CORPORATION (Civ. Act. A 75-53 D. AK.).

The Honorable Dale Gumpers
Page 2

Section 13 of last year's Senate Bill would have changed the present law as to the relationship between the regions and villages to the detriment of the villages. Regardless, a region can already enter into an agreement like the one referred to in Section 13 of last year's Senate Bill if it wants to without new legislation.

We are pleased that this year's Senate Bill no longer contains the provision from Section 13 of last year's Senate Bill. If there are going to be references in the "1991 legislation" to agreements concerning Section 7i revenue sharing, then a general reference to valid agreements is preferable to a reference to any specific alleged agreement such as the June 29, 1982 settlement among the regional corporations. This would mean deleting the reference to the June 29, 1982 agreement in Section 7a(f)(2)(iii) which is in Section 6 of H.B. 278 and Section 7b(f)(2) which is in Section 7 of H.B. 278. It would be better to use the approach proposed in the ALASKA FEDERATION OF NATIVES draft of referring to "any valid agreement" without Congress determining by legislation that any particular agreement is valid.

Thank you for your consideration.

Sincerely,

EKLUTNA, INC.

A. Debbie Fullenwider
A. DEBBIE FULLENWIDER
President



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

June 1, 1987

Committee on Energy and Natural Resources
Subcommittee on Public Lands
The Honorable Dale Bumpers, Chairman
United States Senate
308 Dirksen Senate Office Building
Washington, D.C. 20510

ATTN: Tom Williams

Dear Senator Bumpers:

Pursuant to Committee notice that the hearing record of May 19, 1987 on Alaska Native Claims (S. 1145/H.R. 278) would be open until June 2, 1987, the National Rifle Association of America respectfully submits the enclosed statement by Wayne Anthony Ross on behalf of the NRA, for inclusion in the hearing record.

For the numerous reasons detailed in our statement, it is the conclusion of the NRA that S. 1145 and H.R. 278 are unsatisfactory and should not be passed. Since the original Alaska Native Claims Settlement Act was negotiated to settle all Native Claims in Alaska, any Amendments should not take a neutral position, but should reaffirm that native sovereignty simply does not exist and that such questions of native sovereignty were settled under the original Alaska Native Claims Settlement Act for the compensation paid therein.

Thank you for the opportunity to comment on this issue of vital concern to our membership.

Sincerely,

James Jay Baker
Director
Governmental Affairs Division

JJB:smj
Encl.

**Wayne
Anthony
Ross**
ATTORNEY AT LAW

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WRITTEN STATEMENT PRESENTED BY
ATTORNEY WAYNE ANTHONY ROSS ON BEHALF
OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA
IN OPPOSITION TO H.R.278 AND S.1145 (ALASKA
NATIVE CLAIMS SETTLEMENT AMENDMENTS - 1987)

The Alaska Native Claims Settlement Act (ANCSA) was negotiated to settle all Native claims in Alaska. It was the largest land settlement negotiated with an American-Native population in the United States history. It involved the selection and transfer of over 40 million acres of Alaska land and payment to Alaska Native groups of more than \$962,000,000. It extinguished all reservation lands, with one exception, and extinguished all claims based on aboriginal hunting and fishing rights. Its specific purpose was to avoid creating a reservations system and to avoid establishing any permanent, racially defined institutions or creating any racially defined rights or privileges. The bottom line is that this settlement was to bring the Alaska Native population into the mainstream of Alaskan life. The intent was clearly to avoid tribal sovereignty such as has existed in the rest of the United States.

At present, the House has passed H.R.278 and the Senate is considering S.1145 which would amend ANCSA. These purposed Amendments, as written, raise issues involving Native

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sovereignty, management of fish, wildlife, and other natural resources, taxation, equitable treatment of all Alaskan Natives, shareholder control of Native corporations and Native entities, legal immunities for Native concerns, and conservation of lands and resources.

Last year, the National Rifle Association's Board of Directors, passed a resolution unanimously opposing legislation such as H.R.278. The NRA also submitted verbal and written comments concerning H.R.4162 (1986) which has now been reintroduced in 1987 as H.R.278. The NRA adamantly opposed H.R.4162 and, of course, adamantly opposes H.R.278 because these bills have the effect of enhancing Alaska Native claims to sovereignty.

The NRA also opposes Senate Bill 1145 in its present form. S.1145 is much less onerous than H.R.278 but still does not put to rest once and for all the question of Native sovereignty in Alaska. The NRA believes that S.1145 still needs substantial revisions before the NRA can support it. We believe the proposed Amendments enhance sovereignty by assuming a neutral position on it, when the original ANCSA Bill was, as aforesaid, designed to settle all Native claims in Alaska, and was thus not neutral on sovereignty. The original legislation was clearly opposed to sovereignty. The Amendments would now change this original Act from one of

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opposed to sovereignty, to one of neutral on the issue. We therefore oppose the Amendments.

THESE AMENDMENTS ENHANCE
CLAIMS TO NATIVE SOVEREIGNTY

The National Rifle Association opposes these Amendments because they would have the effect of enhancing Alaska Native claims to sovereignty. The impact of these Amendments on Native claims of tribal status as Indian country is potentially great. Therefore, the National Rifle Association urges the Senate to address tribal status, Indian country, and sovereignty directly, as opposed to merely disclaiming any effect on the scope of sovereign powers, if they exist.

Despite the claims of many individuals who are in favor of these Amendments, the clear intent of Congress in passing the Alaska Native Claims Settlement Act in 1971 was to eliminate the existence of Indian country in Alaska, a requirement for Native sovereignty. Recently, a State of Alaska Task Force on Federal-State-Tribal Relations prepared for former Governor William Sheffield of Alaska, reviewed the effect of the Alaska Native Claims Settlement Act on claims of Native sovereignty. The Governor's Task Force found that there are several sections in ANCSA which clearly indicate an intent to eliminate the existence of Indian country and concomitant claims of sovereignty.

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A PROFESSIONAL CORPORATION

For example, the Task Force pointed out that in the Declaration of Policy of the 1971 Act, § 2(b) of ANCSA, Congress stated:

The settlement should be accomplished rapidly . . . without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship . . .

Congress also went one step further and actually extinguished all reservations in Alaska with the exception of the Metlakatla Indian Community of Annette Island. In ANCSA, Metlakatla was given due opportunity to participate in the benefits of ANCSA. However, significantly if it had chosen to participate in the benefits, it would give up its reservation status. It chose to remain a reservation Indian country.

The Congressional Conference Committee explained the purpose of this change of land ownership status from reservation (where title was held by the Secretary of Interior in trust for the Native people) to private fee lands (where title is held by business corporations established pursuant to State law) as follows:

Subsection 2(g) of the Conference Report is to be strictly construed and the Conference Committee does not intend that lands granted to Natives under this Act be considered 'Indian reservation' lands for purposes other than those specified in this Act. The lands granted by this Act are not 'in trust' and the Native villages are not 'Indian reservations'.

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As Governor Sheffield's Task Force found, the major difference between a reservation and private fee land is that the former is Indian country and the later is not. Congress intended its revocation of all but one Indian reservation to make Native people in Alaska subject to the same laws as other residents of Alaska.

Significantly, the Native American Rights Fund (a legal defense group for Native Americans) recognized that the ANCSA altered the legal status of Alaska Native tribes. In response to the American Indian Policy Review Commission's position that ANCSA did not affect tribal status, the Native American Rights Fund said:

However, serious exception must be taken with the basic premise of the finding that the (Settlement Act) did not intend to nor has it affected the sovereign powers residing in the Alaska Native communities. Although the (Settlement Act) does not terminate Alaska Natives with respect to their eligibility for federal services based on their status as Natives, it is wholly inaccurate to say that the Act did not alter, in any way, the legal nature or status of Alaska Native tribes.

The Native American Rights Fund then stated (as grounds for its position that ANCSA was intended to and did affect the sovereign powers residing in Alaska Native Communities) that § 2(b):

. . . expresses a policy against creating reservations, wardships, or racially defined institutions;

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See, Price, Native Rights, Alaska Department of Law, 1982, at 69-70.

H.R.278, as it was passed by the House, contains language which would, in effect, revoke § 2(b) of the original Act, eliminating, among other provisions of § 2, the provision that:

The Settlement should be accomplished . . .
 . . without establishing any permanent
 racially defined institutions, rights,
 privileges, or obligations, without
 creating a reservations system or lengthy
 wardship or trusteeship, . . .

Clearly the effect of H.R. 278, as it passed the House, would be to repeal the original intent of the Alaska Native Claims Settlement Act of 1971 and to enhance claims of Native sovereignty.

Some supporters of these Amendments claim that the Amendments are neutral as to their effect on Native sovereignty. This is clearly not the case. For example, § 21(a) (page 70 through 71) and § 21(b) read as follows:

(a) No provision of this Act (The Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets under section 40 of the Alaska Native Claims Settlement Act, as amended, to a qualified transferee entity), or change in the status of land (including a change in ownership) effected under this Act shall be construed to --

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(1) enlarge or diminish or in any way affect the scope of the governmental authority, if any, of any Native organization, including any federally recognized tribe, traditional Native council, Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended, or qualified transferee entity over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska;

(2) grant or deny any governmental authority to such organization over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska; or

(3) create or validate or invalidate any assertion by such organization of any form of governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or over persons in Alaska.

(b) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), amendment made by this Act, exercise of authority pursuant to this Act (including a conveyance of assets under section 40 of the Alaska Native Claims Settlement Act to qualify transferee entity), or change in the status of land (including a change in ownership) effected under this Act shall be construed to validate or invalidate or in any way affect any assertion that Indian country, as defined in section 1115 of title 18, United States Code, exists or does not exist in Alaska.

These particular sections clearly negate the intent of the Alaska Native Claims Settlement Act. As discussed

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above, the effect of the original Alaska Native Claims Settlement Act was to extinguish assertions of Native sovereignty in the State of Alaska.

H.R.278 is even worse. Both these disclaimers are not sufficient. They fail to address three issues related to sovereignty. First, they fail to address whether these Amendments, in conjunction with actions that could be taken under them, will enhance claims of tribal status. (Tribal status is significant to a claim of sovereignty.) Second, they fail to address whether these Amendments establish a method by which lands conveyed under the Alaska Native Claims Settlement Act could be converted into Indian country, which is also necessary for sovereignty.

Although § 21(c) provides that:

No provision of this Act . . . (including a conveyance of assets . . . to a qualified transferee entity), or change in the status of land . . . may be taken into account by any court in determining . . .

(2) the existence of Indian country within the boundaries of the State of Alaska . . .

The Act limits this disclaimer to courts and their decision making authority. It does not preclude governmental agencies from making such a determination and thus the disclaimer does not go far enough. Finally, we believe the Amendments enhance

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ATTORNEYS AT LAW

the opportunity for sovereignty by redefining the Alaska Native Claims Settlement Act as Indian legislation (§ 2(8)).

The 1991 Amendments, as passed in H.R.278, and as proposed in S.1145, despite the disclaimer, potentially effect the legal consequences of the Alaska Native Claims Settlement Act by establishing numerous immunities, including tax immunity, for Native lands and Native people and by establishing "qualified transferee" entities as racially defined and controlled institutions, contrary to the original intent and purpose of ANCSA.

The consequences of tribal status, Indian country, and sovereignty are numerous and frightening. For example, there could be nearly 200 tribal governments in the State of Alaska. The most important consequence would be the effect on the regulatory powers of the State and these tribal entities. State health and safety codes, State regulation of fish and wildlife habitat, and State regulation of fish and game harvest would be affected. It is precisely this effect that the National Rifle Association opposes.

NATIVE SOVEREIGNTY COULD
ADVERSELY AFFECT THE ENVIRONMENT

With the possibility of several hundred village councils regulating fish and wildlife habitat and fish and game harvest, the real possibility of inconsistent regulation exists. Presently, all Alaskans must comply with uniform and

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consistent rules and regulations concerning fish and wildlife habitat and fish and game harvest. The State and Federal regulations apply uniformly to all Alaskans. Native Alaskans are not singled out for special treatment. The Alaska Native Claims Settlement Act extinguished all aboriginal hunting and fishing claims.

In other areas of natural resource harvest, the environmental community has already observed the effect of transferring ownership from the Federal sector to the private sector. For example, the environmental community no longer has the ability to affect timber cutting policies in Southeast Alaska where the land has been transferred to Native owned corporations. This has resulted in some very inconsistent policies in the timber resource harvest.

In a resource rich state like Alaska, it is imperative that fish and wildlife habitat and fish and game harvest be subject to uniform and consistent regulation. Alaska is an extremely fragile environment and to allow individual communities, regardless of whether they are Native or non-Native, to control the habitat and fish and game harvest would be disastrous.

NATIVE SOVEREIGNTY PROMOTES RACIAL DISHARMONY

Even now the Village of Tyonek has enacted an ordinance prohibiting non-Natives from staying overnight in

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the village. Other villages in Alaska are charging "trespass fees" of up to \$1,000 per person. Some villages have stated publically that they intend to control commercial and sport fishing in navigable waters by restricting such fishing to Natives only. If these Amendments are passed, the situation in Alaska will get much worse.

Native sovereignty allows the Native villages or groups to, among other things, control the management of fish and game in their area, control or banish hunting for non-Natives and otherwise interfere with proper State game management. Alaska could be divided up into several hundred hunting preserves run by individual Native villages or Native groups where non-Natives would be required to buy licenses, pay to hunt, or be denied the opportunity to hunt at all. Clearly this is not what Congress intended when it passed the Alaska Native Claims Settlement Act in 1971 and is not in Alaska's or the nation's best interest.

The Settlement Act itself said that its intent was to not create racially defined institutions, rights or privileges. It is for these reasons that the National Rifle Association opposes these Amendments and requests that the Senate not pass either S.1145 in its present form, or H.R.278, as passed by the House.

With regard to S.1145, we strongly object to Congress finding that the Alaska Native Claims Settlement Act, as

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amended, and this Act are both Indian legislation enacted by Congress to regulate Indian affairs (§ 2(8)). The Alaska Native Claims Settlement Act is presently listed in the United States Code under "public lands" and we do not believe that there is any reason for Congress to specifically find that the Settlement Act and this Act are Indian legislation. Indeed, we believe such a statement is harmful and may foster Native sovereignty.

We object to § 40 which gives Native corporations authority to convey to entities "organized pursuant to, or recognized by, State or Federal law (including a traditional Native council or a Native council organized pursuant to the Act of June 18, 1934 [48 Stat. 987, as amended]; or entities which have a membership 'composed of persons whose interests in the entity is non-transferable.'") This is precisely the creation of racially defined institutions that the original Act was intended to prevent.

We object to the neutral position on sovereignty taken by S.1145. Section 21, the disclaimer section, takes an allegedly neutral position on the Act and the Amendments when, as aforesaid, the Act was not neutral but was initially intended to settle all Native claims in Alaska. By amending the Act to take a neutral position, Congress is effectively

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A PROFESSIONAL CORPORATION

revoking the settlement of all Native claims originally contemplated by ANILCA and opening a Pandora's Box to a plethora of litigation. Furthermore, while the disclaimer section provides that a court cannot construe the Settlement Act Amendments to determine Indian country or enlargement or diminishment of Native authority (i.e. sovereignty), the language does not preclude the Department of Interior or other governmental departments from so construing the Act.

In conclusion therefore, it is the position of the National Rifle Association of America that H.R. 278 and S. 1145 are unsatisfactory and should not be passed. Since the original Alaska Native Claims Settlement Act was negotiated to settle all Native claims in Alaska, any Amendments should not take a neutral position but should reaffirm that Native sovereignty simply does not exist and that such questions of Native sovereignty were settled under the original Alaska Native Claims Settlement Act for the compensation paid therein.

RESPECTFULLY SUBMITTED this 28th day of May, 1987.


WAYNE ANTHONY ROSS
Director, National
Rifle Association
Attorney at Law

Working for the Nature of Tomorrow.



NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

STATEMENT OF
NATIONAL WILDLIFE FEDERATION
ON
S. 1145, ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1987
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
WASHINGTON, D.C.
JUNE 2, 1987

The National Wildlife Federation (NWF) is the nation's largest not-for-profit conservation organization with 4.6 million members and supporters and 51 affiliated organizations in states and territories including Alaska. We have a continuing interest in the conservation of the abundant fish and wildlife resources of Alaska and the impact legislation such as S. 1145 might have on those natural resources.

NWF supports the intention of S. 1145 to protect the integrity of the Native corporations as Native owned and controlled and to prevent the involuntary loss of Alaska Native Claims Settlement Act (ANCSA) lands after 1991. However, we are concerned that S. 1145, as presently written, will have long-term consequences on the management of Alaskan fish and wildlife resources.

Sovereignty

While S. 1145 is an improvement over H.R. 278 as each relates to sovereignty, we remain skeptical that there are adequate safeguards for preserving the status quo of state authority over natural resources.

We believe that the establishment of native sovereignty in Alaska would change significantly fish and wildlife management. A pattern of tribal sovereignty would fragment the legal authority over fish and wildlife and jeopardize the coordinated, scientific management and conservation of Alaska's fish and wildlife resources.

The legislative history of ANCSA clearly states that "A major purpose of Congress [was] to avoid perpetuating the reservation and trustee system which has characterized the relationship of the Federal government to Indian peoples in the contiguous 48 states." S. 1145 should be amended to add a savings clause and improve the disclaimer clause in order to preserve the original intent of ANCSA.

Specifically in section 21 of S. 1145, a savings clause should be added which affirmatively preserves state authority over natural resources. Such a clause would preserve the status quo of state management of fish and wildlife resources while allowing continued debate about sovereignty over internal and social relationship.

Section 13

Section 13 of S. 1145 provides additional immunities over and above those offered by the Land Bank of the Alaska National Interest Lands Conservation Act. These immunities include protection from loss of land due to bankruptcy, insolvency, and/or involuntary dissolution of a Native corporation. However, section 13 contains loopholes in its definition of development and thus reduces the incentive for keeping lands undeveloped.

We believe the existing land bank provisions should remain unchanged. Lands placed in the bank are managed cooperatively and compatibly with adjacent State and Federal public lands. By contrast, section 13 requires no compatible management or other responsibilities in return for additional immunities.

Since the Land Bank now is functioning as intended, we urge the subcommittee to delete section 13 of S. 1145.

Conclusion

With these changes, we support S. 1145 as an important refinement of ANCSA. We look forward to working with the subcommittee to fashion legislation which meets the needs of the Native community and conserves fish and wildlife resources.



THE WILDERNESS SOCIETY

STATEMENT OF SUSAN ALEXANDER, ALASKA REGIONAL DIRECTOR, ON
S. 1145, BEFORE THE ENERGY AND NATURAL RESOURCES COMMITTEE OF
THE SENATE, MAY 19, 1987.

Mr. Chairman, The Wilderness Society appreciates the opportunity to submit testimony on S. 1145, a bill to protect the ownership of Native corporation stock and Native lands, among other things. The primary goals of this legislation are of direct and critical importance to Alaska Natives, but its significance extends to all Americans because of the proximity of Native lands to Alaska's invaluable national interest lands. The Wilderness Society has, for over 50 years, been committed to the wise management of all the federal lands and the preservation of wilderness. The management of Native land will have profound effects on much of Alaska's federal lands. Hence, the interest of the Society in S. 1145.

The Wilderness Society strongly supports the bill's essential purpose to prevent the loss of Native control of Native lands. The Society also supports the method employed to achieve that end: removal of the 1991 deadline, set in the Alaska Native Claims Settlement Act (ANCSA), that would lift the restriction on the alienation of stock to non-Natives.

Of particular interest to The Wilderness Society is the provision that would extend the protections of the Land Bank, established by the Alaska National Interest Lands Conservation Act (ANILCA), to all undeveloped Native land. The Society applauds the goal of this section to relieve Native corporations of a tax burden and the possibility that land may be lost as a result of an adverse court judgment or other involuntary action. These threats could lead to land development that would adversely affect lands critical for subsistence and prove deleterious to adjacent federal lands. The Society, however, believes this provision of the bill to be unnecessary at this time, though the immunities provided by the Land Bank should be expanded to include bankruptcy and voluntary dissolution.

The Reagan Administration has been slow in executing cooperative agreements pursuant to the existing Land Bank provisions. A couple of agreements have been signed in the past year, but it's too early to judge their success or that of the concept as a whole. The existing Land Bank should be given a chance to work before being neutralized by the provisions of S. 1145. If it appears that the Land Bank program is not workable, then Congress should act to provide the necessary protection in subsequent legislation. We understand such an opportunity may be forthcoming in the form of yet another ANCSA "clean-up" amendment package to be pursued after the 1991 question is resolved.

To sum up, The Wilderness Society strongly supports the basic goal of S. 1145 to prevent the loss Native control of critical Native lands. However, the language of the bill as drafted raises many important questions of great consequence to Alaska Natives and the nation as a whole. For this reason, the Society urges the Committee to remedy the problem at hand and not to unnecessarily complicate the legislation.

The Society looks forward to working with this Committee, the Native community, and other interested parties to develop those provisions that will affect Alaska's federal lands, and specifically the national interest lands adjacent to Native holdings. We hope a cooperative effort of this sort will lead to the wise management of both federal and Native lands, which will directly benefit those dependent on the land while advancing the fundamental goals of the Alaska Lands Act.

Saguyak Incorporated
P.O. Box 4
Clarks Point, AK 99569
(907) 236-1244

May 29, 1987

Tom Williams
c/o Senate Energy &
Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Williams:

Saguyak Incorporated, a village corporation representing 121 shareholders and the village of Clarks Point in the Bristol Bay Region, wishes to submit this letter as testimony for the hearing record on 1991 legislation. The approval of 1991 legislation is vital to the continued survival of all village corporations. The bills before the Committee provide the necessary tools for the villages to protect their lands through the automatic land bank provisions and their corporations through the automatic stock extensions for villages. A number of other positive provisions for village shareholders are also included.

Please act quickly to pass 1991 legislation so the villages can be protected. Thank you for your consideration of this testimony.

Sincerely,

Joseph L. Clark / jo

Joseph L. Clark
President

Chignik River Limited
P.O. Box 007
Chignik Lake, Alaska 99564
(907) 845-2212

May 29, 1987

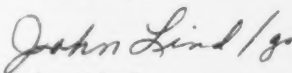
Tom Williams
c/o Senate Energy &
Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Williams:

Chignik River Limited, a village corporation representing 104 shareholders and the village of Chignik Lake in the Bristol Bay Region, wishes to submit this letter as testimony for the hearing record on 1991 legislation. The approval of 1991 legislation is vital to the continued survival of all village corporations. The bills before the Committee provide the necessary tools for the villages to protect their lands through the automatic land bank provisions and their corporations through the automatic stock extensions for villages. A number of other positive provisions for village shareholders are also included.

Please act quickly to pass 1991 legislation so the villages can be protected. Thank you for your consideration of this testimony.

Sincerely,

A handwritten signature in cursive script that reads "John Lind / g".

John Lind
President

Alaska Native Coalition
c/o Native American Rights Fund
1712 N Street, NW
Washington, DC 20036

May 28, 1987

The Honorable Dale Bumpers, Chairman
Subcommittee on Public Lands, National Parks
and Forests
SD-229 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Alaska Native Coalition ("ANC") and the Tanana Chiefs, which joined ANC recently, represents over 100 Alaska Native villages who fear that their ownership and control of their native lands and the integrity of their tribal governments could be dramatically and adversely affected by pending amendments to the Alaska Native Claims Settlement Act of 1971 ("ANCSA").

Two bills amending ANCSA, H.R.278 and S.1145 were the subject of hearings on May 19, before Senate Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests.

As one of the principal Native architects of ANCSA, I view this landmark legislation as an act of justice which Congress confirmed through its investment of 44 million acres, \$1 billion, and its stated desire to benefit the

Alaska Natives. In the sixteen years since ANCSA's enactment, it has become clear that Native corporations established under the Act have not worked for many of the Native villages in rural Alaska where business institutions are alien to the Native culture and tribal governments are trusted and used.

Many Alaska Native villages wish to opt out of the corporate system which has not worked for them. They want, through a vote of corporate shareholders, to be able to transfer title to their ANCSA lands to their tribal governments where they will receive the protections afforded by tribal government. They want the tribal option.

S.1145 provides for a tribal option, but it exacts a price that threatens our tribal governmental powers. H.R.278 also has several deficiencies.

The Alaska Native Coalition has the support of national Indian organizations, Indian tribes and churches who are concerned that provisions in the pending ANCSA amendments harmful to Alaska Native tribes could serve as precedents for laws adversely affecting tribes in the lower 48 states.

The Coalition is a volunteer organization with members scattered throughout rural Alaska. The lack of a fulltime officer or even an office is hampering us at this critical time. Be we are committed to the involvement of our villages in the decision-making process. The support for our views is strong, but we need time to organize it.

-3-

Mr. Chairman, on behalf of the Alaska Native Coalition, I respectfully request that the markup of the pending ANCSA amendments take place no sooner than the fall of this year so that the Coalition may be better prepared to present the village concerns. I also request the opportunity to meet with you briefly on this issue. I will be in Washington, D.C. for two weeks beginning June 7 and will attempt to contact you at that time.

John Borbridge, Member
Executive Committee
Alaska Native Coalition

Choggiung Limited
P.O. Box 1110
Dillingham, AK 99576
(907) 842-5218

May 29, 1987

Tom Williams
c/o Senate Energy &
Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Williams:

Choggiung Limited, the village corporation representing 1049 shareholders of the merged villages of Dillingham, Ekuk and Portage Creek in the Bristol Bay Region, wishes to submit this letter as testimony for the hearing record on 1991 legislation. The approval of 1991 legislation is vital to the continued survival of all village corporations. The bills before the Committee provide the necessary tools for the villages to protect their lands through the automatic land bank provisions and their corporations through the automatic stock extensions for villages. A number of other positive provisions for village shareholders are also included.

Please act quickly to pass 1991 legislation so the villages can be protected. Thank you for your consideration of this testimony.

Sincerely,

Lloyd Stiassny /gs

Lloyd Stiassny
General Manager

Kijik Corporation
4155 Tudor Centre Drive
Suite 104
Anchorage, Alaska 99508
(907) 561-4487

May 29, 1987

Tom Williams
c/o Senate Energy &
Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Williams:

Kijik Corporation, a village corporation representing 256 shareholders and the village of Nondalton in the Bristol Bay Region, wishes to submit this letter as testimony for the hearing record on 1991 legislation. The approval of 1991 legislation is vital to the continued survival of all village corporations. The bills before the Committee provide the necessary tools for the villages to protect their lands through the automatic land bank provisions and their corporations through the automatic stock extensions for villages. A number of other positive provisions for village shareholders are also included.

Please act quickly to pass 1991 legislation so the villages can be protected. Thank you for your consideration of this testimony.

Sincerely,

Dennis Trefon /s/

Dennis Trefon
President

ALASKA PENINSULA CORPORATION
P.O. Box 4360
Anchorage, Alaska 99510
(907) 274-2433

May 29, 1987

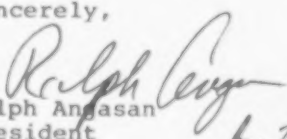
Tom Williams
c/o Senate Energy &
Natural Resources Committee
United States Senate
Washington, D.C. 20510

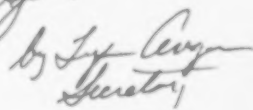
Dear Mr. Williams:

Alaska Peninsula Corporation, the village corporation representing 462 shareholders of the consolidation of villages of South Naknek, Port Heiden, Ugashik, Kokhanok, and Newhalen in the Bristol Bay Region, wishes to submit this letter as testimony for the hearing record on 1991 legislation. The approval of 1991 legislation is vital to the continued survival of all village corporations. The bills before the Committee provide the necessary tools for the villages to protect their lands through the automatic land bank provisions and their corporations through the automatic stock extensions for villages. A number of other positive provisions for village shareholders are also included.

Please act quickly to pass 1991 legislation so the villages can be protected. Thank you for your consideration of this testimony.

Sincerely,


Ralph Angasan
President


Secretary

Aleknagik Natives Limited
P.O. Box 2762
Dillingham, Alaska 99576
(907) 842-2385

May 29, 1987

Tom Williams
c/o Senate Energy &
Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Williams:

Aleknagik Natives Limited, a village corporation representing 231 shareholders and the village of Aleknagik in the Bristol Bay Region, wishes to submit this letter as testimony for the hearing record on 1991 legislation. The approval of 1991 legislation is vital to the continued survival of all village corporations. The bills before the Committee provide the necessary tools for the villages to protect their lands through the automatic land bank provisions and their corporations through the automatic stock extensions for villages. A number of other positive provisions for village shareholders are also included.

Please act quickly to pass 1991 legislation so the villages can be protected. Thank you for your consideration of this testimony.

Sincerely,

Joseph Chythlook/go

Joseph Chythlook
President

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 TOM WILLIAMS C/O SENATE ENERGY & NATURAL RESOURCES COMMITTEE
 U.S. SENATE
 WASHINGTON DC 20510

KONIAG INC, URGES THE IMMEDIATE PASSAGE OF 1991 LEGISLATION BY THE SENATE. THE BILL INTRODUCED BY SENATORS STEVENS AND MURKOWSKI, S.1145, CAN BE SUPPORTED BY KONIAG BECAUSE IT PROVIDES THE OPTIONS FOR KONIAG'S SHAREHOLDERS TO MAKE CHOICES REGARDING THE CORPORATION'S FUTURE. KONIAG APPRECIATES THE RAPID CONSIDERATION BY THIS COMMITTEE OF 1991 LEGISLATION AND THANKS THE COMMITTEE FOR THE OPPORTUNITY TO SUBMIT TESTIMONY FOR THE RECORD.

SINCERELY,
 FRANK PAGANO, PRESIDENT
 KONIAG INC.

10150 PST

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